

**RS 2012/2 22 April 2013**

**THE TAKEOVER PANEL**

**PENSION SCHEME TRUSTEE ISSUES**

**RESPONSE STATEMENT BY THE  
CODE COMMITTEE OF THE PANEL FOLLOWING  
THE CONSULTATION ON PCP 2012/2**

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## **1. Introduction and summary**

### **(a) Background**

1.1 On 5 July 2012, the Code Committee of the Takeover Panel (the “**Code Committee**”) published a public consultation paper (“**PCP 2012/2**” or the “**PCP**”) in relation to “pension scheme trustee issues”.

1.2 PCP 2012/2 set out proposed amendments to the Takeover Code (the “**Code**”) such that, broadly, the trustees of an offeree company’s pension scheme (or schemes) would be afforded similar rights to those currently afforded to an offeree company’s employee representatives (which derive substantially from Article 9(5) of the Takeovers Directive).

1.3 Paragraph 2.5 of the PCP explained that it was intended that the collective effect of the proposed amendments would be limited to creating a framework within which the effects of an offer on an offeree company’s pension scheme could become a debating point during the course of the offer and a point on which the parties to the offer and the trustees of the pension scheme could have an opportunity to express their views. The Code Committee stated that its intention was to help to ensure that the effects of the offer on a pension scheme could be discussed by the relevant parties at an early stage, with the result that any issues which might arise as a consequence of the potential change of control of the company could then be considered by shareholders in the offeree company and others. However, the Code Committee made it clear that that framework was not intended to, nor would it, ensure that offers would become or be declared unconditional only once an offeror and the trustees of the offeree company’s pension scheme had reached agreement on the future funding arrangements for the scheme.

### **(b) Responses to the consultation**

1.4 The consultation period in relation to PCP 2012/2 ended on 28 September 2012. The Code Committee received comments on the consultation questions

from 35 respondents, including from pension scheme trustees, pension scheme advisers, other professional advisers, trade associations and professional bodies. The 29 respondents who submitted comments on a non-confidential basis are listed in Appendix A to this Response Statement and copies of their responses have today been published on the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk). The remaining six respondents submitted their comments on a confidential basis. The Code Committee thanks all of the respondents for their comments.

1.5 Most respondents, particularly the pension scheme trustees and pension scheme advisers, were supportive of the proposed amendments. The principal objectors to the proposed amendments were members of the legal profession and the private equity industry.

1.6 Issues raised by respondents included the following:

- (a) whether the proposed new provisions should be limited in application to either "defined benefit" or "trust-based" pension schemes;
- (b) whether the proposed requirement for the offeror to state its intentions with regard to an offeree company's pension scheme should be clarified;
- (c) whether the proposed requirement for the board of an offeree company (in addition to the offeror) to give its views on the effects of an offer on its pension scheme was, in fact, appropriate;
- (d) whether the Code should require the offeree company (or the offeror) to pay for the costs incurred by pension scheme trustees in obtaining advice required for the verification of their opinion on the effects of the offer on the pension scheme (the PCP had proposed that the Code should not require this); and

- (e) whether the proposed requirement that any agreement between the offeror and the trustees of an offeree company's pension scheme should be published on a website was appropriate, given that certain provisions of such agreements were likely to be confidential and commercially sensitive.

(c) ***The Code Committee's conclusions***

- 1.7 Having carefully considered the responses to the consultation, the Code Committee has, in most cases, adopted the amendments to the Code which it proposed in PCP 2012/2, although modifications have been made to certain of the proposed amendments, as explained in this Response Statement.

(d) ***Code amendments***

- 1.8 The amendments to the Code which the Code Committee has adopted are set out in Appendix B to this Response Statement. In Appendix B, underlining indicates new text and striking-through indicates deleted text, as compared with the current provisions of the Code.
- 1.9 Where new or amended provisions of the Code are set out in the main body of this Response Statement, they are marked to show changes from the provisions and amendments proposed in PCP 2012/2.

(e) ***Implementation***

- 1.10 The amendments to the Code introduced as a result of this Response Statement will take effect on Monday, 20 May 2013. In particular, the revised Rule 25.9 will apply with effect from the date of implementation, even if the offer document to which the pension scheme trustees' opinion relates was published prior to that date.
- 1.11 Amended pages of the Code will be published prior to the implementation date.

**2. The offeror’s intentions with regard to the offeree company’s pension scheme**

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

**(a) Introduction**

2.1 In paragraph 3.3 of the PCP, the Code Committee proposed the introduction of a new Rule 24.2(a)(iii), which would require the offeror to state:

**“its intentions with regard to the offeree company’s pension scheme(s), and the likely repercussions of its strategic plans for the offeree company on the offeree company’s pension scheme(s)”.**

2.2 Twenty seven of the 31 respondents who expressed a view agreed with the principle that an offeror should be required to disclose its intentions with regard to the offeree company’s pension scheme. Some of those respondents considered that the proposals did not go far enough. Four respondents disagreed with the amendments and considered that they were unnecessary and/or that they would be unduly onerous for offerors.

**(b) Pensions schemes to which the new provisions will apply**

2.3 A number of respondents queried whether the new provisions should apply to all pension schemes within the offeree company’s group or whether they should apply only to, for example:

(a) “defined benefit” pension schemes (and not to “defined contribution” pension schemes) or only to “trust-based” pension schemes;

(b) pension schemes where the offeree company is a “participating employer”;

- (c) UK pension schemes; or
- (d) pension schemes which were deemed to be “material”.

2.4 Having considered the matter further, and having taken respondents’ views into account, the Code Committee believes that the new provisions of the Code should apply with respect to any occupational pension scheme that:

- (a) is a funded scheme which is sponsored by the offeree company (or any of its subsidiaries);
- (b) provides pension benefits, some or all of which are on a defined benefit basis; and
- (c) has trustees (or, in the case of a non UK scheme, managers).

A scheme which provides pension benefits, some or all of which are on a defined benefit basis, will have the potential for a funding deficit relative to the cost of providing the accrued benefits and the trustees (or managers) will be concerned to understand the employer’s intentions regarding the scheme (including the funding of any deficit) and to have the opportunity to make known their views on the effects of the offer on the scheme. The Code Committee believes that the Code should provide the ability for the trustees (or managers) of such a scheme to participate in a debate as to the effects of an offer on the scheme. The Code Committee considers that the relevant provisions of the Code should apply in circumstances where the scheme is sponsored by the offeree company itself or by any subsidiary (and not limited to wholly-owned subsidiaries of the offeree company).

2.5 On reflection, the Code Committee does not believe that the new provisions should apply to a pension scheme which provides pension benefits only on a “defined contribution” basis. In such cases, there will be no debate to be had between trustees (or managers) and an offeror as to the effects of the offer on the scheme. Typically, employer contributions into defined contribution

pension arrangements will be made pursuant to a term of the employees' employment contracts. As such, the pension arrangements will be covered by Rule 24.2(a)(i), which requires an offeror to state:

**“its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material changes in the conditions of employment”.**

In addition, the offeree company's employee representatives will be entitled to give their opinion on the effects of the offer on employment, and to have that opinion published, under Rule 25.9.

2.6 As regards the question of whether the new provisions of the Code will apply only to UK pension schemes, or whether they will also apply to overseas pension schemes, the Code Committee confirms that they will apply to the offeree company's defined benefit pension schemes on a group-wide basis, wherever they may be, and that their application will not be limited to UK schemes.

2.7 With regard to the suggestion that the new provisions of the Code should apply only where there is a “material” pension scheme in the offeree company's group, the Code Committee does not consider that it would be appropriate to introduce a test of materiality. In addition, the Code Committee does not consider that the new provisions will result in disproportionate burdens for an offeror, even where the offeree company's pension scheme(s) might be regarded, on certain measurements, as not being material.

(c) *Nature of the statements to be made by an offeror*

(i) *Summary of responses*

2.8 Various respondents commented on the first limb of the proposed new Rule 24.3(a)(iii), i.e. the requirement for an offeror to state its intentions with regard to the offeree company's pension scheme(s).

- 2.9 A number of respondents noted that the potential effects for a pension scheme of a takeover of an offeree company would fall into two broad categories, i.e.:
- (a) impacts on the benefits which the scheme provides to its members, for example, whether the offeror intended to make changes to or terminate the current benefits (“**benefit impacts**”); and
  - (b) impacts on the ability of the offeree company (having been acquired by the offeror) to make future contributions to the pension scheme (“**covenant impacts**”).

In summary, the three pension scheme adviser respondents who specifically commented on this issue considered that the new Rule 24.3(a)(iii) should require an offeror to make statements with regard to both benefit impacts and covenant impacts. However, the two respondents from the legal profession who specifically commented on this issue considered that, for the reasons given in paragraphs 2.11 and 2.12 below, the requirement under the new Rule 24.3(a)(iii) should be limited to benefit impacts.

- 2.10 A number of respondents suggested that the requirement for the offeror to state its intentions with regard to benefit impacts should be more specific. For example, one respondent suggested that it should not be sufficient for an offeror simply to state that it intended to continue making payments which the offeree company was already committed to making. The respondent suggested that the offeror should also be required to state its intentions with respect to the elimination of any deficit in the pension scheme and whether it intended to keep the scheme open to new members and/or to future accrual.
- 2.11 One of the respondents who opposed the application of the new Rule 24.3(a)(iii) to covenant impacts queried whether it would be appropriate to impose a requirement which would relate to the impact of the financing of the offer on the creditworthiness of the offeree company and to the position of the trustees of a pension scheme as a creditor of the offeree company. The

respondent noted that the purpose of the Code was primarily to protect an offeree company's shareholders, not its creditors.

2.12 The second respondent who opposed the application of the new Rule 24.3(a)(iii) to covenant impacts noted that any view on the offeree company's ability to meet its funding obligations after being taken over by the offeror would depend on various matters, including: how the offer was being financed; any security being provided to lenders; and the time horizon being considered. The respondent noted that it would be possible for an offeror and the pension scheme trustees to come to very different views as to the covenant impacts of the offer on the basis of the same facts and queried whether requiring an offeror to make a statement with regard to covenant impacts would serve any useful purpose.

2.13 Two respondents considered that the second limb of the proposed new Rule 24.3(a)(iii), i.e. the requirement for an offeror to state the "likely repercussions of its strategic plans for the offeree company on the offeree company's pension scheme(s)", was inappropriate and should not therefore be adopted. One of the respondents considered that such a requirement would be unduly onerous and the other considered that it was unlikely that an offeror's strategic plans would have any material effect on the pension scheme.

(ii) *Conclusions*

2.14 The Code Committee has given careful consideration to respondents' comments and suggestions as to the nature of the statements which the Code should require an offeror to make with regard to the offeree company's pension scheme. In reaching its conclusions, the Code Committee has been mindful that the intended effect of the amendments proposed in the PCP was to create a framework within which the effects of an offer on the offeree company's pension scheme can become a debating point during the course of the offer and a point on which the relevant parties can have an opportunity to express their views.

- 2.15 The Code Committee believes that, in order to assist the trustees of an offeree company pension scheme to express their opinion on the effects of the offer on the pension scheme in the context of such a framework, it would be proportionate for the Code to require the trustees to be provided with:
- (a) financial information on the offeror;
  - (b) details of how the offer is being financed; and
  - (c) appropriate disclosures of the offeror's intentions with regard to the pension scheme.
- 2.16 The Code Committee notes that, since September 2011, when amendments to the Code were introduced following its public consultation paper entitled "Review of certain aspects of the regulation of takeover bids: proposed amendments to the Takeover Code" ("**PCP 2011/1**"), Rule 24.3 has required an offeror to disclose in all offers, and not only in securities exchange offers, detailed financial information on itself, the offer and, under Rule 24.3(f), the financing of the offer. In addition, any documents relating to the financing of the offer are required to be published on a website under Rule 26.1(b). As noted in paragraph 6.1 of PCP 2011/1, in concluding that the requirements of the Code should be extended in this way, the Code Committee took into account the fact that constituencies other than offeree company shareholders have an interest in information regarding the financial position of the offeror and its group.
- 2.17 As to the nature of the disclosures which the Code should require an offeror to make in relation to its intentions with regard to an offeree company's pension scheme, the Code Committee has concluded that it would be appropriate to require an offeror to state its intentions with regard to:
- (a) employer contributions into the pension scheme (including with regard to the current arrangements for the funding of any scheme deficit);

- (b) the accrual of benefits for existing members of the scheme; and
- (c) the admission of new members to the scheme.

2.18 However, the Code Committee does not believe that it would be appropriate to require an offeror to make statements with regard to covenant impacts, i.e. an assessment of the future ability of the offeree company to meet its funding obligations to its pension scheme. The Code Committee believes that to require an offeror to make such statements, and to be bound by them in accordance with Note 3 on Rule 19.1, would be disproportionate and/or that such a requirement might be likely to result in disclosures which were not meaningful.

2.19 With regard to the proposed requirement for an offeror to state the likely repercussions of its strategic plans for the offeree company on the offeree company's pension scheme, the Code Committee agrees that such a requirement would not be appropriate. The requirement proposed in PCP 2012/2 was based on Rule 24.2(a)(ii), which requires an offeror to state:

**“its strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's places of business”.**

On reflection, the Code Committee acknowledges that the offeror's strategic plans for the offeree company are unlikely to have repercussions for its pension scheme. The Code Committee has therefore not adopted that aspect of the proposed new Rule 24.2(a)(iii).

2.20 In summary, the Code Committee believes that a requirement for an offeror to disclose its intentions with regard to the matters identified in paragraph 2.17 above, combined with the Code's existing requirements for an offeror to disclose historical financial information and details of the financing of its offer, would place proportionate requirements on an offeror, whilst assisting the trustees to formulate their opinion on the effects of the offer on the offeree company's pension scheme.

(d) *Application of Note 3 on Rule 19.1 to statements of intention*

2.21 Three respondents noted that any statements of intention by an offeror or the board of the offeree company would be subject to the requirements of Note 3 on Rule 19.1, i.e. that the party making the statement would be regarded as committed to that course of action for a period of 12 months from the date on which the offer period ends, or for such other period as is specified in the statement, unless there had been a material change of circumstances. The respondents suggested that a period of longer than 12 months should apply with respect to statements of intention regarding the offeree company's pension scheme.

2.22 The Code Committee continues to believe that, save where a longer period is specifically stated, an offeror should not be regarded as committed to a statement of intention with respect to the offeree company's pension scheme for a period of longer than 12 months for the reasons given in paragraph 3.7 of the PCP. The Code Committee has not, therefore, made any changes to Note 3 on Rule 19.1.

(e) *Amendments to the Code*

2.23 In view of the above, the Code Committee has:

- (a) introduced a new definition of "pension scheme" into the Definitions Section of the Code, as follows:

**"Pension scheme**

A funded scheme sponsored by a company, or any of its subsidiaries, which provides pension benefits, some or all of which are on a defined benefit basis, and which has trustees (or, in the case of a non UK scheme, managers)."; and

- (b) adopted the amendments to Rule 24.2 set out in Appendix B. The relevant provisions of the revised Rule 24.2 will therefore be as follows:

**“24.2 INTENTIONS OF THE OFFEROR WITH REGARD TO THE BUSINESS, EMPLOYEES AND PENSION SCHEME(S)”**

(a) In the offer document, the offeror must state its intentions with regard to the future business of the offeree company and explain the long-term commercial justification for the offer. In addition, it must state:

...

(iii) its intentions with regard to employer contributions into the offeree company’s pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), and the likely repercussions of its strategic plans for the offeree company on the offeree company’s pension scheme(s), the accrual of benefits for existing members, and the admission of new members;

...

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

2.24 In addition, the Code Committee has made certain minor amendments to paragraph (3) of the definition of “acting in concert”, Note 7 on the definition of “acting in concert” and Note 7 on Rule 21.1, as set out in Appendix B. The effect of these amendments is to replace current references in the Code to a company’s “pension fund” with references to its “pension scheme” (as newly defined) and they are not intended to alter the meaning or effect of the relevant provisions in any material respect.

3. The offeree company board’s views on the effects of the offer on its pension scheme

<p><b>Q2 Do you have any comments on the proposed amendments to Rule 25.2(a) relating to the requirement for the offeree board to include in the offeree board circular its views on, among other matters, the effects of implementation of the offer on the offeree company’s pension scheme(s)?</b></p>
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(a) ***Introduction***

3.1 In paragraph 3.5 of the PCP, the Code Committee proposed to amend Rule 25.2(a) so as to require the board of the offeree company to include in its circular its views on:

- (a) the effects of implementation of the offer on its pension scheme(s); and
- (b) the likely repercussions of the offeror's strategic plans for the offeree company on its pension scheme(s).

3.2 In general, respondents' comments on the proposed amendments to Rule 25.2 were consistent with their comments on the proposed amendments to Rule 24.2.

(b) ***Summary of responses***

3.3 One respondent noted that, under Rule 25.9 (as proposed to be amended), the offeree company would be required to disseminate to its shareholders the trustees' opinion on the effects of the offer on the pension scheme and that the trustees were likely to have taken professional advice on the matter. The respondent queried whether an offeree company board would be required to undertake its own analysis before giving its opinion and considered that, if so, this could be both extensive and duplicative of the analysis undertaken by the pension scheme trustees. The respondent queried the purpose of the proposed amendments to Rule 25.2, which it considered could potentially lead to significant additional costs for the offeree company.

3.4 Another respondent, who, as a pension scheme adviser, was generally in favour of the proposals in the PCP, assumed that the reason for requiring the offeree company board to state its views on the effects of the offer on the pension scheme was to demonstrate that it had taken the interests of pension scheme members into account in forming its opinion on the offer. However, the respondent queried whether, in practice, the board was likely to have the

necessary knowledge and experience to give an informed view on these matters or whether it would be able to do so in the proposed timescale.

- 3.5 A third respondent, representing pensions lawyers, queried whether the offeree company board's opinion on the offeror's intentions regarding the pension scheme would be relevant or useful. The respondent noted that, in practice, offeree company boards play a limited role in such matters and that discussions and agreements generally take place between the offeror and the pension scheme trustees. This respondent also queried whether the offeree company board would be required to take advice on the structure of the pension scheme and/or seek the views of the trustees in order properly to give its views on the offeror's intention statement.
- 3.6 Two further respondents suggested that there should be a requirement for the offeree company board to state whether it had sought the views of the pension scheme trustees in formulating its opinion and, if so, to state whether the board's view was in line with that of the trustees.

(c) ***Conclusions***

- 3.7 Having considered the matter further, and having taken respondents' views into account, the Code Committee has concluded that it is not necessary to require the board of the offeree company to include in its circular its own views on the effects of the implementation of the offer on the pension scheme or on the likely repercussions of the offeror's plans for the offeree company on the pension scheme. The Code Committee agrees with the respondents referred to above that the trustees will be the persons best placed to opine on the effects of the offer on the pension scheme and that a requirement for the board to set out its views would be likely to add little to the debate.
- 3.8 However, the Code Committee wishes to make clear that there would be nothing to stop the offeree company board from setting out its opinion on the effects of the offer on the pension scheme and/or from stating whether, in

forming any such opinion, it had sought the views of the pension scheme trustees.

- 3.9 Therefore, the Code Committee has not adopted the proposed amendments to Rule 25.2, which will remain in its current form.

#### **4. Provision of information to pension scheme trustees**

<b>Q3 Do you have any comments on the proposed amendments to Rules 2.12(a), 2.12(b), 24.1, 25.1, 32.1, 32.6(a) and 27.1(b), and to Note 6 on Rule 20.1, in each case relating to the information to be disclosed to the trustees of an offeree company's pensions scheme(s)?</b>
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- 4.1 In section 3(b) of the PCP, the Code Committee proposed that, in order to assist the trustees of the offeree company's pension scheme to formulate their views on the effects of the offer on the scheme, an offeror and the offeree company should be required to make available to the trustees all the documents that they are each required to make available to the offeree company's employee representatives, namely:

- (a) the announcement which commences the offer period (Rule 2.12(a));
- (b) the announcement of a firm intention to make an offer under Rule 2.7 (Rule 2.12(b));
- (c) the offer document (Rule 24.1(a));
- (d) the offeree board circular in response to the offer document (Rule 25.1(a));
- (e) any revised offer document (Rule 32.1(b)); and
- (f) the offeree board circular in response to any revised offer document (Rule 32.6(a)).

- 4.2 There was general agreement with the proposals with regard to the provision of information to pension scheme trustees and the Code Committee has therefore adopted (with some minor revisions) the proposed amendments to Rule 2.12(a), Rule 2.12(b), Note 1 on Rule 2.12, Rule 24.1(a), Rule 25.1, Rule 32.1 and Rule 32.6(a), as set out in Appendix B. In addition, consequential amendments have been made to Note 6 on Rule 20.1, as set out in Appendix B.
- 4.3 As a separate matter, one respondent suggested that it should be a requirement of the Code that the offeree company and the offeror should send copies of offer announcements, offer documents and offeree board circulars to the Pensions Regulator. The Code Committee has discussed this suggestion with the Pensions Regulator, which has confirmed that it is for the parties to approach the Pensions Regulator, should clearance be sought, and that it does not consider it necessary for the Code to require the offeree company and the offeror to send it copies of offer-related announcements and documents, as they will not normally be relevant for the Pensions Regulator's purposes.

**5. Pension scheme trustees' views on the effects of an offer on the scheme**

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

**(a) Introduction**

- 5.1 In section 3(c) of the PCP, the Code Committee proposed that the trustees of offeree company pension schemes should be granted equivalent rights to those granted to offeree company employee representatives under Rule 25.9 (and Rule 32.6(b)), namely:

- (a) to have appended to an offeree board circular a separate opinion from the trustees on the effects of the offer (and any revised offer) on the

pension scheme, provided the opinion is received in good time before the publication of the circular; and

- (b) where the opinion is not received in good time before the publication of the circular, to have the opinion published on a website and for the offeree company to be required to announce that this has been done.

5.2 In addition, in section 3(c) of the PCP, the Code Committee noted that Note 1 on Rule 25.9 requires that the offeree company must pay for the costs reasonably incurred by employee representatives in obtaining advice required for the verification of the information contained in their opinion. However, the Code Committee did not propose the introduction of a similar requirement with regard to the costs incurred by pension scheme trustees. Paragraph 3.11 of the PCP stated that:

“... whereas actuarial and valuation analysis is unlikely to be required in order for employee representatives to verify their opinion on the effects of an offer on employment, it could be argued that such analysis may be required in order for pension scheme trustees to verify their opinion on the effects of an offer on the scheme(s). The Code Committee considers that, in the event of such analysis being carried out, not only might the costs incurred become significant but there might also be considerable dispute as to whether they were incurred reasonably. In any event, the Code Committee understands that, in practice, a sponsoring company will normally be responsible for paying costs reasonably incurred by the trustees of the scheme(s), such that there may often be no need for the Code to require this.”.

(b) *Summary of responses*

5.3 There was general agreement amongst respondents with the proposal that pension scheme trustees should be given the right to have an opinion on the effects of the offer on the offeree company’s pension scheme appended to the offeree board circular or, where the opinion is not received in good time, to have it published on a website.

5.4 A small number of respondents were concerned that the proposed amendments to Rules 25.9 and 32.6 might be read as imposing an obligation on pension

scheme trustees to publish an opinion on the effects of the offer on the offeree company's pension scheme, rather than providing a right to do so. The Code Committee has sought to remove any such ambiguity from the final version of Rules 25.9 and 32.6.

- 5.5 Certain respondents queried the potential scope of the pension scheme trustees' opinion. For example, the respondent referred to in paragraph 2.11 above suggested that the views which the trustees should be invited to express should be limited to those relating to benefit impacts (and the offeror's intentions to make any changes to the benefits of active members) and that the trustees should have no right to comment on covenant impacts (see paragraph 2.9 above).
- 5.6 Fifteen respondents, either expressly or as part of their general agreement with the proposals put forward in the PCP, supported the proposal not to require the offeree company to pay for the costs of verifying the information contained in the pension scheme trustees' opinion in the way that the Code requires the offeree company to pay for the costs incurred by its employee representatives in verifying their opinion. Twelve respondents, a small majority of which were pension scheme trustees or pensions advisers, disagreed with the proposal. Eleven of those respondents considered that the pension scheme trustees' costs should be borne by the offeree company and one considered that such costs should be borne by the offeror.
- 5.7 One pensions adviser respondent, who supported the position that the costs of pension scheme trustees' opinions should not be underwritten by the offeree company, noted that such costs could be both open-ended and substantial. The respondent considered that, unlike employee representatives, pension scheme trustees would typically have the resources to commission any work they deemed to be in the interests of their members. Another pensions adviser respondent similarly agreed that it should not be necessary for the Code to provide that trustee costs should be met by the offeree company. The respondent noted that pension scheme costs were generally met either through

general funding, by including an amount for scheme expenses in funding calculations, or paid directly as a separate item by the sponsoring employer.

(c) *Conclusions*

- 5.8 Having taken respondents' comments into account, the Code Committee continues to believe that it would not be appropriate for the Code to require the offeree company (or the offeror) to pay for the costs incurred by pension scheme trustees in obtaining advice required in order to verify the information contained in any opinion (or otherwise incurred in connection with the preparation of the opinion).
- 5.9 The Code Committee notes that, under the new Rule 25.9(b), the trustees' opinion will be limited to the effects of the offer on the pension scheme(s). As such, an opinion should not include matters such as, for example, the provision of investment advice to offeree company shareholders. However, the Code Committee anticipates that the trustees may wish to opine not only on the benefit impacts referred to in the new Rule 24.2(a)(iii) (i.e. the offeror's intentions with regard to employer contributions, the accrual of benefits for existing members, and the admission of new members) but also, for example, on covenant impacts (i.e. the ability of the offeree company, having been acquired by the offeror, to make future contributions to the pension scheme). The Code Committee considers that the expression of any such opinion would form part of the debate as to the effects of the offer on the pension scheme and does not believe that it would be appropriate for Rule 25.9 to restrict the trustees to expressing an opinion on only certain types of impacts.
- 5.10 The Code Committee has therefore adopted the amendments to Rule 25.9 and Rule 32.6 set out in Appendix B. The revised Rules 25.9 and 32.6 will be as follows:

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

~~Where Tthe board of the offeree company receives in good time before publication of ~~must append to its circular on the offer~~ a separate opinion from:~~

- (a) ~~an opinion from its~~ employee representatives on the effects of the offer on employment; ~~and or~~
- (b) ~~an opinion from the~~ trustees of any of its pension scheme(s) on the effects of the offer on the pension scheme(s),

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

#### *NOTES ON RULE 25.9*

##### *1. Offeree company's responsibility for costs*

*The offeree company must pay for:*

(a) ~~the costs of the publication of the~~ any opinion received from employee representatives<sup>2</sup> and/or the pension scheme trustees' opinion ~~and, in the case of the employee representatives' opinion,~~ for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion in order to comply with the standards of Rule 19.1-; and

(b) the costs of the publication of any opinion received from trustees of its pension scheme(s).

(See also Rule 32.6(b).)"; and

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

...

(b) ~~Where Tthe board of the offeree company receives in good time before publication of ~~must append to its circular on the revised offer~~ a separate opinion from:~~

- (i) ~~an opinion from its~~ employee representatives on the effects of the revised offer on employment; or and

**(ii) an opinion from the trustees of any of its pension scheme(s) on the effects of the revised offer on the pension scheme(s),**

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

***NOTE ON RULE 32.6***

***Employee representatives' opinion: ~~o~~Offeree company's responsibility for costs***

*See Note 1 on Rule 25.9."*

**6. Informing pension scheme trustees of their rights under the Code**

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

- 6.1 Section 3(c) of the PCP proposed that the Code should require the trustees of the offeree company's pension scheme to be informed of their rights under the amended Rules 25.9 and 32.6.
- 6.2 There was general support for the proposal and the Code Committee has therefore amended Rules 2.12(d) and 32.1(b), as set out in Appendix B.
- 6.3 Section 3(c) of the PCP also proposed a minor consequential amendment to Rule 19.2, relating to directors' responsibility statements, which has also been adopted, as set out in Appendix B.
- 6.4 One respondent commented that one or more directors of the board of the offeree company were often trustees of the offeree company's pension scheme

and queried whether such directors would be expected to cease to act as a trustee, owing to there being a conflict of interest. The Code Committee notes that the questions of whether a director of the offeree company who is also a trustee of the offeree company's pension scheme will have a conflict of interest and, if so, how that conflict ought to be managed, are matters for the directors concerned, the offeree company, and the pension scheme trustees, and would not normally be matters for the Panel to resolve.

## 7. Agreements entered into between an offeror and pension scheme trustees

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

### (a) *Introduction*

7.1 In section 3(d) of the PCP, the Code Committee proposed that, in the event of an offeror entering into an agreement with the trustees of the offeree company's pension scheme in relation to the future funding arrangements for the scheme, the Code should require:

- (a) a summary of the agreement to be included in the offer document (proposed new Rule 24.3(d)(xvi)); and
- (b) a copy of the agreement to be published on a website (proposed new Rule 26.2(i)),

in order that the agreement could be reviewed by the beneficiaries of the pension scheme and other interested parties.

7.2 In addition, section 3(d) of the PCP noted that Rule 21.2(a) provides, broadly, that, except with the consent of the Panel, neither the offeree company nor any

person acting in concert with it may enter into an offer-related arrangement with either the offeror or any person acting in concert with it. Therefore, an agreement in relation to the future funding of the offeree company's pension scheme(s) would normally be prohibited by Rule 21.2(a) if either the offeree company was a party to the agreement or if the trustees of the pension scheme were acting in concert with the offeree company. However, the Code Committee considered that it was not necessary to amend Rule 21.2 to address this point, on the basis that the offeree company would not normally be a party to such an agreement and that pension scheme trustees would normally be independent of the sponsoring company.

**(b) *Summary of responses***

- 7.3 Most of the respondents who commented on Question 6 agreed with the proposed amendments, although a small number raised concerns with the proposals.
- 7.4 One respondent considered that the proposed amendments were unnecessary, given that it was the responsibility of pension scheme trustees (as and when they considered appropriate and subject to any specific reporting requirements) to communicate with scheme beneficiaries with regard to any agreements on funding and related matters. Another respondent agreed with the proposal that a summary of any agreement between the trustees and the offeror should be included in the offer document but considered that the agreement itself should remain confidential. A third respondent considered that, while pension scheme trustees might wish to disclose to their members particular funding or financial undertakings by an offeror contained in such agreements, the documents themselves should remain confidential as they might contain provisions which were commercially sensitive and which were not of direct interest to individual scheme members.
- 7.5 Two respondents considered that the Code Committee's statement that pension scheme trustees are normally independent of the sponsoring company overlooked the fact that directors were often trustees of a company's pension

scheme. One of those respondents considered that the application of Rule 21.2(a) to such directors would place an undesirable limitation on engagement between an offeror and the pension scheme trustees and suggested that the application of the Code in such circumstances should be made clearer. Another respondent noted that, under paragraph (3) of the definition of “acting in concert”, a company is presumed to be acting in concert with its pension funds, albeit that this presumption would be capable of being rebutted, depending on the circumstances of a particular case. The respondent suggested that Rule 21.2 might be amended so as to include an agreement in relation to the future funding of the offeree company’s pension scheme among the list of matters which, under Rule 21.2(b), are specifically excluded from the ambit of Rule 21.2(a).

**(c) Conclusions**

- 7.6 The Code Committee has reconsidered the basis on which it proposed the introduction of requirements for any agreement between the offeror and the trustees of an offeree company pension scheme to be summarised in the offer document and published on a website. The Code Committee notes that the provisions of the Code are aimed primarily at the protection of offeree company shareholders and that the amendments to the Code adopted in this Response Statement are intended primarily to create a framework within which the effects of an offer on the offeree company’s pension scheme might become a debating point during the course of the offer. On reflection, the Code Committee considers that it would be inappropriate for the basis of the introduction of the amendments proposed in the PCP to be that this would allow an agreement entered into between an offeror and the trustees of an offeree company pension scheme to be reviewed by the pension scheme beneficiaries and other interested parties.
- 7.7 The Code Committee has concluded that the better view is that an agreement between an offeror and the trustees of an offeree company pension scheme should be treated under the Code in the same way as other agreements entered into by an offeror in connection with the offer. In summary:

- (a) Rule 24.3(a)(vii) (or, as appropriate, Rule 24.3(b)) requires the offer document to include a summary of each material contract entered into by the offeror during the period beginning two years before the commencement of the offer period; and
- (b) Rule 26.2(d) requires an offeror to publish on a website any material contract entered into in connection with the offer that is described in the offer document in compliance with Rule 24.3(a) (or Rule 24.3(b)) or entered into after the publication of the offer document.

In addition, even where an agreement is not a material contract entered into in connection with the offer, it may nevertheless fall under Rule 26.2(b), which requires the publication on a website of, broadly, any document which is referred to in any document published by or on behalf of the offeror (other than material contracts not entered into in connection with the offer).

- 7.8 Where an agreement between an offeror and the trustees of an offeree company pension scheme is a material contract of the offeror, the Code Committee believes that it should be required to be published on a website under Rule 26.2(d), in the same way as any other material contract entered into in connection with the offer. However, the Code Committee has concluded that, where an agreement between an offeror and the trustees of an offeree company pension scheme is not a material contract of the offeror, the Code should not require a copy to be published on a website under Rule 26.2, even if it has been referred to in a document published by the offeror.
- 7.9 As regards Rule 21.2, the Code Committee notes that, even if an agreement between an offeror and the trustees of the offeree company's pension scheme were to fall within the ambit of Rule 21.2(a), it would be open to the Panel to grant a dispensation from the prohibition on entering into offer-related arrangements. Nevertheless, the Code Committee has accepted the suggestion that Rule 21.2(b) should be amended so as specifically to exclude agreements between an offeror and the trustees of the offeree company's pension scheme

from the ambit of Rule 21.2(a). However, the Code Committee considers that the exclusion from the prohibition in Rule 21.2(a) should be limited to an agreement in relation to the future funding of the pension scheme. Accordingly, the Code Committee does not consider, for example, that it would be permissible for the agreement to impose any obligations or restrictions on the trustees of the pension scheme as regards any other offeror or potential offeror.

- 7.10 The Code Committee notes that, if an offer-related arrangement or other agreement, arrangement or commitment is permitted under, or excluded from, Rule 21.2, a summary of its terms is required to be included in the firm offer announcement under Rule 2.7(c)(vii) and in the offer document (or any revised offer document) under Rule 24.3(d)(xv). In addition, a copy is required to be published on a website under Rule 26.1(d). These requirements are referred to in Note 4 on Rule 21.2. The Code Committee believes that an agreement between an offeror and the trustees of the offeree company's pension scheme should be required to be summarised in the offer announcement and the offer document in accordance with Rule 2.7(c)(vii) and Rule 24.3(d)(xv). However, consistent with its conclusion above, the Code Committee has concluded that an agreement between an offeror and the trustees of the offeree company's pension scheme should be required to be published on a website only if the agreement is a material contract of the offeror.

**(d) *Amendments to the Code***

- 7.11 In view of the above the Code Committee has:

- (a) introduced a new Note 6 on Rule 26, as follows:

**“6. *Agreements between an offeror and the trustees of the offeree company's pension scheme(s)***

*An agreement between an offeror and the trustees of any of the offeree company's pension schemes will be required to be published on a website only if the agreement is a material contract of the offeror.*";

(b) amended Rule 21.2(b), as follows:

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

...

**(vii) an agreement between an offeror and the trustees of any of the offeree company's pension schemes in relation to the future funding of the pension scheme.**”; and

(c) amended Note 4 on Rule 21.2, as follows:

**“4. Disclosure**

*An announcement of a firm intention to make an offer, offer document or whitewash circular, as the case may be, must include a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2 and, subject to Note 6 on Rule 26, a copy of the agreement, arrangement or commitment must be published on a website in accordance with Rule 26.1.”.*

7.12 The Code Committee has not, however, adopted the new Rule 24.2(d)(xvi) or the new Rule 26.2(i) proposed in the PCP.

## **8. The Pensions Regulator**

8.1 As was noted in section 3(e) of PCP 2012/2, certain respondents to PCP 2011/1 had suggested that the Code should impose a requirement that, by a specified date in the offer timetable, an offeror and the trustees of the offeree company's pension scheme should be required to have reached a definitive position on the offeror's funding commitments regarding the pension scheme,

failing which the Panel should be required to refer the matter to the Pensions Regulator.

- 8.2 As was made clear in PCP 2012/2, the Code Committee's intention is to create a framework within which the effects of an offer on the offeree company's pension scheme could become a debating point during the course of the offer. As was stated in the final sentence of paragraph 2.5 of the PCP:

“[t]he framework is not intended to, nor would it, ensure that offers would become or be declared unconditional only once an offeror and the trustees of the offeree company's pension scheme(s) had reached agreement on the future funding arrangements for the scheme(s).”

- 8.3 Notwithstanding the statements in section 3(e) and paragraph 2.5 of the PCP, a number of respondents considered that, in certain circumstances, the Panel should be required to refer an offer to the Pensions Regulator. For example, one respondent considered that where, in the opinion of the trustees, the offer would be materially detrimental to the ability of the pension scheme to meet its obligations and it had not been possible to agree appropriate mitigation by a specified date in the offer timetable, the matter should be referred to the Pensions Regulator. Other proponents of a requirement for the Panel to refer an offer to the Pensions Regulator sought to draw a comparison with cases in which a reference is made to the Competition Commission or the European Commission, which, under Rule 12, causes the offer to lapse.

- 8.4 The Code Committee notes that the Panel does not currently have any powers to refer offers to other regulatory bodies prior to their becoming unconditional. Having discussed the matter with the Pensions Regulator, the Code Committee does not believe that it would be appropriate for it to introduce any such powers into the Code. The Pensions Regulator's clearance process is voluntary and trustees and/or employers are able to approach the Pensions Regulator at any time. In addition, references to the Competition Commission are made by the Office of Fair Trading and/or the European Commission and it is the European Commission itself which decides whether to initiate Phase II proceedings under Article 6(1)(c) of Council Regulation 139/2004/EC.

8.5 In summary:

- (a) any decision to seek clearance from the Pensions Regulator is a matter for an offeror (and associated or connected parties); and
- (b) it is for employers and trustees (but not for the Panel) to engage with the Pensions Regulator if they so wish.

**APPENDIX A****Respondents to PCP 2012/2  
(excluding those who submitted comments on a confidential basis)**

1. Aon Hewitt Limited
2. Association for Financial Markets in Europe
3. Association of British Insurers
4. Association of Pension Lawyers
5. BAL Trustee Limited
6. Better Capital LLP
7. British Private Equity and Venture Capital Association
8. BT Pension Scheme Management Limited
9. Buck Consultants
10. Grant Thornton UK LLP
11. Institute and Faculty of Actuaries
12. Institute of Chartered Accountants in England and Wales
13. Institute of Chartered Accountants in Scotland
14. ITV Pension Scheme Limited
15. KPMG LLP
16. Law Debenture (The Law Debenture Pension Trust Corporation p.l.c.)
17. Long-Term Practical Perspectives Limited
18. Mercer Limited
19. National Association of Pension Funds
20. Penfida Partners LLP
21. Pensions Regulator
22. Royal Mail Pension Trustees Limited
23. RPMI Limited
24. Scottish & Newcastle Pensions Group
25. Takeovers Joint Working Party of the City of London Law Society Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law
26. Towers Watson Limited
27. TUC
28. TUI Pension Scheme (UK) Ltd
29. Unite the Union

## APPENDIX B

### Amendments to the Code

#### DEFINITIONS

##### **Acting in concert**

...

Without prejudice to the general application of this definition, the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:

...

(3) a company with any of its pension ~~fund~~schemes and the pension ~~fund~~schemes of any company covered in (1);

...

#### ***NOTES ON ACTING IN CONCERT***

...

##### **7. *Pension schemes~~fund~~s***

*The presumption that a company is acting in concert with any of its pension ~~fund~~schemes will normally be rebutted if it can be demonstrated to the Panel's satisfaction that the assets of the pension ~~fund~~scheme are managed under an agreement or arrangement with an independent third party which gives such third party absolute discretion regarding dealing, voting and offer acceptance decisions relating to any securities in which the pension scheme is interested~~the fund~~. Where, however, the discretion given is not absolute, the presumption will be capable of being rebutted, provided that the pension ~~fund~~scheme trustees do not exercise any powers they have retained to intervene in such decisions.*

...

##### **Pension scheme**

A funded scheme sponsored by a company, or any of its subsidiaries, which provides pension benefits, some or all of which are on a defined benefit basis, and which has trustees (or, in the case of a non UK scheme, managers).

**Rule 2.12**

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

(a) Promptly after the commencement of an offer period (except where an offer period begins with an announcement under Rule 2.7), a copy of the relevant announcement must be:

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

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

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

(i) the offeree company must send a copy of that announcement, or a circular summarising the terms and conditions of the offer, to its shareholders, persons with information rights and the Panel and must make that announcement or circular readily available to the trustees of its pension scheme(s); and

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

...

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

**NOTES ON RULE 2.12**

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

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

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

...

**Rule 19.2****19.2 RESPONSIBILITY**

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

...

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

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

...

**NOTES ON RULE 20.1**

...

6. ***Sharing information with employee representatives (or employees) 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 employees or pension scheme trustee ~~are~~ is interested in a significant number of shares.*

## **Rule 21**

### **21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED**

...

#### **NOTES ON RULE 21.1**

...

#### **7. Pension schemes**

*This Rule may apply to proposals affecting the offeree company's pension scheme(s) ~~arrangements~~, such as proposals involving the application of a pension fund ~~and~~ scheme surplus, a material increase in the financial commitment of the offeree company in respect of its pension scheme(s) or a change to the constitution of the pension scheme(s). The Panel must be consulted in advance in relation to such proposals.*

...

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

...

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

...

(v) ... ; **and**

(vi) ... ; **and**

**(vii) an agreement between an offeror and the trustees of any of the offeree company's pension schemes in relation to the future funding of the pension scheme.**

...

#### **NOTES ON RULE 21.2**

...

#### **4. Disclosure**

*An announcement of a firm intention to make an offer, offer document or whitewash circular, as the case may be, must include a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2 and, subject to Note 6 on Rule 26, a copy of the agreement, arrangement or commitment must be published on a website in accordance with Rule 26.1.*

#### **Rule 23.2**

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

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

...

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

...

#### **NOTE ON RULE 23.2**

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

...

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

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

## Rule 24

### 24.1 THE OFFER DOCUMENT

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

...

### 24.2 INTENTIONS OF THE OFFEROR WITH REGARD TO THE BUSINESS, EMPLOYEES AND PENSION SCHEME(S) REGARDING THE OFFEREE COMPANY, THE OFFEROR COMPANY AND THEIR EMPLOYEES

(a) In the offer document, the offeror must state its intentions with regard to the future business of the offeree company and explain the long-term commercial justification for the offer. In addition, it must state:

...

(iii) its intentions with regard to employer contributions into the offeree company's pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members;

(iiiv) ... ; and

(ivv) ... .

(b) If the offeror has no intention to make any changes in relation to the matters described under (a)(i) to (iiiv) above, or if it considers that its strategic plans for the offeree company will have no repercussions on

employment or the location of the offeree company's places of business, it must make a statement to that effect.

## Rule 25

### 25.1 THE OFFEREE BOARD CIRCULAR

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

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

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

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

#### *NOTE ON RULE 25.1*

*Where there is no separate offeree board circular*

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

...

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

Where the board of the offeree company receives in good time before publication of must append to its circular on the offer a separate opinion from:

(a) an opinion from its employee representatives on the effects of the offer on employment; or

(b) an opinion from the trustees of any of its pension scheme(s) on the effects of the offer on the pension scheme(s),

any provided such opinion is received in good time before publication of that must be appended to the circular. Where ~~the any such opinion of the~~

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

**NOTES ON RULE 25.9**

**1. Offeree company's responsibility for costs**

*The offeree company must pay for:*

*(a) the costs of the publication of ~~the any~~ opinion received from employee representatives' ~~opinion~~ and for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion in order to comply with the standards of Rule 19.1-; and*

*(b) the costs of the publication of any opinion received from trustees of its pension scheme(s).*

*(See also Rule 32.6(b).)*

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

*See Rule 2.12(d).*

**Rule 26**

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

...

**NOTES ON RULE 26**

...

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

...

**6. Agreements between an offeror and the trustees of the offeree company's pension scheme(s)**

An agreement between an offeror and the trustees of any of the offeree company's pension schemes will be required to be published on a website only if the agreement is a material contract of the offeror.

**Rule 32**

**32.1 PUBLICATION OF REVISED OFFER DOCUMENT**

(a) If an offer is revised, a revised offer document, drawn up in accordance with Rules 24 and 27, must be sent to shareholders of the offeree company and persons with information rights. On the same day, the offeror must:

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

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

(b) At the same time,:

(i) both the offeror and the offeree company must make the revised offer document readily available to their employee representatives (or, where there are no employee representatives, to the employees themselves);

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

(iii) the offeree company must inform its employee representatives (or employees) and the trustees of its pension scheme(s) of the right of employee representatives and pension scheme trustees under Rule 32.6 to have a separate opinion on the revised offer appended to any offeree board circular published in relation to the revised offer, and ~~In addition, the offeree company must inform its employee representatives (or employees) of the offeree company's responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that~~ their opinion.

...

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

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

...

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

(b) Where the board of the offeree company receives in good time before publication of must append to its circular on the revised offer:

(i) a separate an opinion from its employee representatives on the effects of the revised offer on employment; or

(ii) an opinion from the trustees of any of its pension scheme(s) on the effects of the revised offer on the pension scheme(s),

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

#### *NOTE ON RULE 32.6*

~~*Employee representatives' opinion: o*~~ *Offeree company's responsibility for costs*

*See Note 1 on Rule 25.9.*