

**RS 2014/1 14 November 2014**

**THE TAKEOVER PANEL**

**MISCELLANEOUS AMENDMENTS TO THE  
TAKEOVER CODE**

**RESPONSE STATEMENT BY THE  
CODE COMMITTEE OF THE PANEL FOLLOWING  
THE CONSULTATION ON PCP 2014/1**



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## **1. Introduction**

### **(a) Background**

1.1 On 16 July 2014, the Code Committee of the Takeover Panel (the “**Code Committee**”) published a public consultation paper (“**PCP 2014/1**” or the “**PCP**”) in which it proposed certain miscellaneous amendments to the Takeover Code (the “**Code**”). Those proposals are summarised in the following Sections of this Response Statement.

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

1.2 The consultation period in relation to PCP 2014/1 ended on 12 September 2014. The Code Committee received comments on the consultation questions from nine respondents, including from trade associations and professional bodies, financial advisers and an accountancy firm. The respondents who submitted comments on a non-confidential basis are listed in Appendix A and copies of their responses have been published on the Panel’s website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk). The remaining respondents submitted their comments on a confidential basis. The Code Committee thanks all of the respondents for their comments.

1.3 Respondents were generally supportive of the proposed amendments.

### **(c) The Code Committee’s conclusions**

1.4 Having considered the responses to the consultation, the Code Committee has, in most cases, adopted the amendments to the Code which were proposed in PCP 2014/1. However, the Code Committee has introduced modifications to certain of the proposals. In addition, the adoption of some of the suggestions which were made by respondents has resulted in changes to the drafting of certain provisions of the Code which, in the opinion of the Code Committee, do not materially alter the effect of the provisions in question.

- 1.5 The Code Committee continues to believe that, overall, the amendments will provide greater certainty and transparency as to the operation of the Code and that they are a proportionate response to the issues identified.

**(d) Code amendments**

- 1.6 The amendments to the Code which the Code Committee has adopted in this Response Statement are set out in Appendix B. In Appendix B, except as otherwise stated, underlining indicates new text and striking-through indicates deleted text, as compared with the current provisions of the Code. 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 as they were proposed to be amended in the PCP, unless otherwise indicated.

**(e) Implementation**

- 1.7 The amendments to the Code introduced as a result of this Response Statement will take effect, and revised pages of the Code will be published, on 1 January 2015.

## 2. Clarification by potential competing offerors of their position

### (a) *Introduction*

2.1 In Section 2 of the PCP, the Code Committee proposed to amend Rule 2.6 so that the deadline for a potential competing offeror which has been the subject of a “possible offer” announcement (“**Offeror 2**”) to clarify its position should be a firm date rather than a flexible date which is set by the Panel on a case-by-case basis. At present, the Code provides that a potential competing offeror must clarify its position “on or around” 10 days prior to the final day for the fulfilment of the acceptance condition to the offer made by the first offeror (“**Offeror 1**”). The Code Committee proposed that the deadline for clarification by Offeror 2 should be extended and that it should be calculated as 5.00pm on the 53rd day after the publication of Offeror 1’s offer document.

2.2 In addition, the Code Committee proposed to amend Section 4 of Appendix 7 so that, in cases where Offeror 1’s offer is to be implemented by means of a scheme of arrangement, the deadline by which Offeror 2 would normally be required to clarify its position would be extended to the seventh day prior to the date of the shareholder meetings. However, the Code Committee proposed that, in appropriate cases, the Panel should be able to permit Offeror 2 to clarify its position by no later than the seventh day prior to the date of the court sanction hearing in relation to the scheme of arrangement.

2.3 Separately, the Code Committee proposed to introduce a new Note 5 on Rule 32.1 in order to make explicit in the Code the point that, where the Panel consents to an extension to “Day 60” of the offer timetable, it will normally also extend “Day 46” or, where the original Day 46 has already passed, set a new Day 46.

### (b) *Summary of respondents’ views and the Code Committee’s response*

2.4 The respondents agreed that the latest date for Offeror 2 to clarify its position should be a firm date, as opposed to a flexible date which is set by the Panel

on a case-by-case basis, and that the deadline should be extended to seven days prior to the final day on which Offeror 1's offer is capable of becoming or being declared unconditional as to acceptances.

- 2.5 One respondent observed that, if Offeror 1 were to set a final closing date which was on or before the 53rd day following the publication of its offer document, there was a risk that Offeror 1's offer might lapse (because shareholders in the offeree company who were waiting to see whether Offeror 2 would announce a firm offer would not accept Offeror 1's offer) but that Offeror 2 might then not proceed to announce a firm offer. The respondent was concerned that, in such circumstances, offeree company shareholders would, in effect, be denied an exit opportunity from either offeror.
- 2.6 The Code Committee recognises that such a risk exists but considers that it is outweighed by the arguments in favour of setting the latest date for clarification by Offeror 2 by reference to Day 60, which were set out in paragraph 2.19 of the PCP. These included the argument that to require otherwise might lead to Offeror 2 being required to clarify its position in an unrealistically short time period, thereby reducing the likelihood of Offeror 2 being able to announce a competing firm offer, which could be an outcome detrimental to the interests of shareholders in the offeree company. In addition, setting the deadline for clarification by reference to Offeror 1's actual final closing date would enable Offeror 1 to force Offeror 2 to clarify its position at a time of Offeror 1's choosing, thereby conferring an unfair tactical advantage on Offeror 1.
- 2.7 As regards the proposal that, where Offeror 1's offer is proceeding by way of a scheme of arrangement, Offeror 2 should normally be required to clarify its position by no later than the seventh day prior to the date of the shareholder meetings to approve the scheme, two respondents observed that the deadline for the appointment of proxies will be 48 hours prior to the date of the shareholder meetings, potentially giving offeree company shareholders less time to process their decision than in the case of a contractual offer.



- 2.8 The Code Committee recognises that the proxy deadline will mean that shareholders will, in effect, have less time to process their investment decision in the context of an offer being implemented by means of a scheme than in the case of a contractual offer. However, the Code Committee believes that shortening the period currently available to offeree company shareholders by three days should not have a material impact on the ability of shareholders to exercise their votes at the shareholder meetings and notes that no respondent from the investor community raised this as a concern.
- 2.9 Two respondents sought clarification as to when the Panel might consider that it would be “appropriate” to permit Offeror 2 to clarify its position after the date of the shareholder meetings. One respondent considered that it would be reasonable to expect Offeror 2 to clarify its intentions ahead of the shareholder meetings where they were being held, say, 53 days from the date on which the offer was first announced but that Offeror 2 should be permitted to clarify its intentions after the date of the shareholder meetings where they were being held only, say, 23 days after the announcement of the offer. Another respondent suggested that Offeror 2 should be permitted to clarify its position after the date of the shareholder meetings only in “exceptional” circumstances, as opposed to “appropriate” circumstances.
- 2.10 The Code Committee discussed the circumstances in which the Panel might be expected to exercise its discretion to permit clarification by Offeror 2 after the date of the shareholder meetings in paragraph 6.5 of PCP 2007/1 (Schemes of arrangement). The Code Committee gave the example of a situation in which a short timetable for the scheme of arrangement had been established by Offeror 1 and the board of the offeree company, which timetable might have the effect of giving Offeror 2 little opportunity to consider its position and to undertake the necessary preparatory work ahead of the shareholder meetings. The Code Committee continues to believe that this would be the type of situation in which it would be appropriate for the Panel to permit clarification by Offeror 2 after the date of the shareholder meetings. The Code Committee continues to believe that the Panel should have the flexibility to exercise its

discretion in this way “where appropriate” and does not believe that the Panel should be limited to doing so only in “exceptional circumstances”.

- 2.11 Another respondent suggested that the new Day 53 deadline should appear in Rule 2.6 itself, rather than in Note 3 on Rule 2.6. The Code Committee has accepted this suggestion. The amended Rules 2.6(d) and (e) will therefore read as follows (and Note 3 on Rule 2.6 will be deleted):

**“2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT**

...

**(d) When an offeror has announced a firm intention to make an offer and it has been announced that a publicly identified potential offeror might make a competing offer (whether that announcement was made prior to or following the announcement of the first offer), the potential offeror must, by a date in the later stages of the offer period 5.00 pm on the 53rd day following the publication of the first offeror’s initial offer document, either:**

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or**
- (ii) announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies.**

**(See Section 4 of Appendix 7 where the first offeror is proceeding by means of a scheme of arrangement.)**

**(e) When an offeror has announced a firm intention to make an offer and the offeree company subsequently refers to the existence of a potential competing offeror which has not been identified, the potential competing offeror so referred to must, by a date in the later stages of the offer period 5.00 pm on the 53rd day following the publication of the first offeror’s initial offer document, either:**

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or**
- (ii) confirm to the offeree company that it does not intend to make an offer, in which case the offeree company must promptly announce that fact and the potential**

**competing offeror will be treated as if it had then made a statement to which Rule 2.8 applies.**

**(See Section 4 of Appendix 7 where the first offeror is proceeding by means of a scheme of arrangement.)**

- 2.12 As regards the proposal that a potential competing offeror which was permitted to clarify its position after the shareholder meetings to approve a scheme should be required to do so **“by no later than 5.00 pm on the seventh day prior to the date of the court sanction hearing”**, two respondents considered that it would not be helpful for the Code to prescribe a specific date by which a clarification should be made. One of those respondents considered that the Panel should be able to determine the appropriate deadline having taken into account the particular circumstances of such a case.
- 2.13 The Code Committee accepts this and has not therefore adopted the relevant proposed amendment to Section 4(b) of Appendix 7. Section 4 of Appendix 7 will read as follows:

**“4 HOLDING STATEMENTS**

**(a) ~~If an announcement of the kind described in Rule 2.6(d) or (e) is made during an offer period involving~~ When an offeror has announced a firm intention to make an offer to be implemented by means of a scheme of arrangement and it has been announced that a potential competing offeror might make an offer (see Rules 2.6(d) and (e)), the Panel will normally require the potential offeror to clarify its position by no later than 5.00 pm on the seventh day prior to the date of the shareholder meetings.**

**(b) Where appropriate, however, taking into account all relevant ~~circumstances~~ factors, including:**

**(i) the interests of offeree company shareholders and the desirability of clarification prior to the shareholder meetings; and**

**(ii) the time which the potential offeror has had to consider its position,**

**the Panel may permit clarification ~~the potential offeror to clarify its position~~ after the date of the shareholder meetings but ~~by no~~**

**~~later than 5.00 pm on the seventh day prior to~~ before the date of the court sanction hearing.**

**(c) The Panel will announce the ~~date~~ deadline by which clarification is required under paragraph (a) or (b) above.”.**

2.14 As regards the proposed new Note 5 on Rule 32.1, one respondent suggested that it should be made clear in Rules 31.6 and 32.1 that it is possible, with the consent of the board of the offeree company, for an offeror to revise its offer after Day 46, provided that Day 60 is then extended and Day 46 re-set. The Code Committee recognises this point and has accordingly made a number of amendments to Rules 31.6 and 32.1, as set out in Appendix B. The Code Committee has also made a number of other amendments to Rules 31.6 and 32.1 which, in the opinion of the Code Committee, do not materially alter the effect of those provisions.

2.15 In summary, the Code Committee has:

- (a) introduced a new Rule 31.6(a)(iii) to provide the Panel with the express ability to extend Day 60 where there is a significant delay in the decision as to whether there will be a Phase 2 CMA reference or an initiation of Phase 2 European Commission proceedings. The ability to extend Day 60 in such circumstances currently resides in Note 3 on Rule 31.6;
- (b) introduced a new Rule 31.6(b) which requires any extension to which the Panel consents to be announced in accordance with Rule 2.9. This requirement currently resides in Note 1(b) on Rule 31.6;
- (c) moved the provisions of Note 2 on Rule 31.6 into Rule 31.6(d) (previously Rule 31.6(c)). Rule 31.6(c) currently includes a cross-reference to Note 2 which has been deleted;
- (d) introduced a new Note 1 on Rule 31.6, making clear that, where Day 60 is extended in accordance with Rules 31.6(a)(i) to (iv) (as

amended), appropriate extensions will normally be made to Days 39, 46 and 53;

- (e) deleted the first sentence of Note 1(a) on Rule 31.6 and moved the remainder of Note 1(a) into a new Note 6 on Rule 31.6;
- (f) moved the first paragraph of the current Note 4 on Rule 31.6 so as to become Note 2 on Rule 31.6 (with one minor amendment) and moved the second paragraph of the current Note 4 on Rule 31.6 so as to become Note 3 on Rule 31.6 (with certain minor amendments); and
- (g) introduced a new Note 4 on Rule 31.6 in relation to extensions of Day 60 after Day 46 (see paragraph 2.14 above). This will, in effect, codify existing practice and the Code Committee understands that, as a result, the Panel Executive (the “**Executive**”) intends to withdraw Practice Statement No 8 (Timetable extensions in potentially competitive situations).

2.16 The relevant provisions, as they will read once the amendments have been implemented, are set out below:

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

**(a) Except with the consent of the Panel, an offer (whether revised or not) may not become or be declared unconditional as to acceptances after midnight on the 60th day after the day the initial offer document was published. The Panel’s consent will normally only be given:**

**(i) if a competing firm offer has been announced (see Note 2); or**

**(ii) if the board of the offeree company consents to an extension; or**

**(iii) if there is a significant delay in the decision on whether there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings (see Note 5); or**

- (iv) as provided for in Rule 31.9; or
- (v) if the offeror's receiving agent requests an extension for the purpose of complying with Note 7 on Rule 10; or
- (vi) when withdrawal rights are introduced under Rule 13.6.

(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.

(c) For the purpose of the acceptance condition, the offeror may only take into account acceptances or purchases of shares in respect of which all relevant electronic instructions or documents (as required by Notes 4 and 5 on Rule 10) are received by its receiving agent before the last time for acceptance set out in the offeror's relevant document or announcement. This time must be no later than 1.00 pm on the 60th day (or any other date beyond which the offeror has stated that its offer will not be extended). In the event of an extension with the consent of the Panel in circumstances other than those set out in paragraphs (a)(i) to (iv) above, acceptances or purchases in respect of which relevant electronic instructions or documents are received after 1.00 pm on the relevant date may only be taken into account with the agreement of the Panel, which will only be given in exceptional circumstances.

(d) Except with the consent of the Panel, on the 60th day (or any other date beyond which the offeror has stated that its offer will not be extended) an announcement should be made by 5.00 pm as to whether the offer is unconditional as to acceptances or has lapsed. Such announcement should include, if possible, the details required by Rule 17.1 but in any event must include a statement as to the current position in the count. The requirement to make an announcement by 5.00 pm should not be reflected in the terms of the offer pursuant to Rule 24.7, but, if there is any question of a delay in the announcement, the Panel should be consulted as soon as practicable. Only in exceptional circumstances will the Panel agree to an offeror's request that this announcement may be made after 5.00 pm.

***NOTES ON RULE 31.6***

**1. Consequential changes to the offer timetable**

*Where the Panel consents to an extension in accordance with any of Rules 31.6(a)(i) to (iv), it will normally also grant an extension to or, if appropriate, re-set “Day 39” (see Rule 31.9), “Day 46” (see Rule 32.1(c)) and “Day 53” (see Rules 2.6(d) and (e)).*

**2. Timetable for competing firm offers**

*If a competing firm offer has been announced, both offerors will normally be bound by the timetable established by the publication of the competing offer document. In addition, the Panel will extend “Day 60” in accordance with any auction procedure established by the Panel in accordance with Rule 32.5.*

**3. No extension under Rule 31.6(a)(ii) after “Day 46” of a competing firm offer**

*Where competing firm offers have been made, the Panel will not normally give its consent to an extension of “Day 60” under Rule 31.6(a)(ii) unless its consent is sought before the 46th day following the publication of the competing offer document (see also Rule 32.5).*

**4. Extension of “Day 60” after “Day 46”**

*The Panel will normally grant an extension to “Day 60” (with a corresponding extension to, or re-setting of, “Day 46”) of an offeror’s timetable where the board of the offeree company consents to such an extension. Therefore, provided that such consent is obtained, and subject to no unreserved “no extension” statement (see Rule 31.5) or “no increase” statement (see Rule 32.2) having been made, the offeror will normally be able to revise its offer, notwithstanding that the original “Day 46” has passed.*

*Where an offeror has made an offer and it has been announced that a potential offeror might make a competing offer (see Rules 2.6(d) and (e)), the Panel will normally, at the request of the first offeror and with the consent of the board of the offeree company, consent to an extension of “Day 60” (with a corresponding extension to, or re-setting of, “Day 46”) as described above. In such cases, the Panel will normally also require a corresponding extension to, or re-setting of, “Day 53”, being the date by which the potential competing offeror is required to confirm its position in accordance with Rule 2.6(d) or (e) (as applicable).*

## 5. *The CMA and the European Commission*

*In the case of an extension in accordance with Rule 31.6(a)(iii), the Panel will normally extend “Day 39” to the second day following the announcement of the decision on whether there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings.*

## 6. *Where a Code matter remains outstanding on the final closing date*

*When there is a Code matter outstanding on the final closing date, it may be inappropriate for the offer to become or be declared unconditional as to acceptances or to lapse at that time. In such a case, the Panel may, in addition to the circumstances set out in Rule 31.6(a), consent to the offer being extended, but with no extension of the time by which all relevant electronic instructions or documents in respect of acceptances, withdrawals and purchases must be received for the purpose of the acceptance condition, as referred to in Rule 31.6(c) and Rule 34.1.*

...

## **31.9 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39**

**... If an announcement of the kind referred to in this Rule is made after the 39th day, the Panel will normally be prepared to consent to an extension to “Day 46” (see Rule 32.1(c)), “Day 53” (see Rules 2.6(d) and (e)) and/or “Day 60” (see Rule 31.6(a)) as appropriate.**

...

## **32.1 PUBLICATION OF REVISED OFFER DOCUMENT**

...

**(c) The offer must be kept open for at least 14 days following the date on which the revised offer document is published. Therefore, no revised offer document may be published in the 14 days ending on the last day the offer is able to become unconditional as to acceptances.\* (See also Rule 31.6 and the Notes on Rule 31.6.)**

## ***NOTES ON RULE 32.1***

...



### 3. ***When revision is not permissible\****

*Since an offer must remain open for acceptance for 14 days following the date on which the revised offer document is published, an offeror will generally not be able to revise its offer, and must not place itself in a position where it would be required to revise its offer, in the 14 days ending on the last day its offer is able to become unconditional as to acceptances (see also Rule 31.6 and the Notes on Rule 31.6). Nor must an offeror place itself in a position where it would be required to revise its offer if it has made a no increase statement as defined in Rule 32.2.*

...

### 5. ***Extension of “Day 60” after “Day 46”***

*The Panel will normally grant an extension to “Day 60” (with a corresponding extension to, or re-setting of, “Day 46”) of an offeror’s timetable where the board of the offeree company consents to such an extension. Therefore, provided that such consent is obtained, and subject to no unreserved “no extension” statement (see Rule 31.5) or “no increase” statement (see Rule 32.2) having been made, the offeror will normally be able to revise its offer, notwithstanding that the original “Day 46” has passed.*

*Where an offeror has made an offer and it has been announced that a potential offeror might make a competing offer (see Rules 2.6(d) and (e)), the Panel will normally, at the request of the first offeror and with the consent of the board of the offeree company, consent to an extension of “Day 60” (with a corresponding extension to, or re-setting of, “Day 46”) as described above. In such cases, the Panel will normally also require a corresponding extension to, or re-setting of, “Day 53”, being the date by which the potential competing offeror is required to confirm its position in accordance with Rule 2.6(d) or (e) (as applicable).*

#### (c) ***Amendments to the Code***

- 2.17 Save as described above, the Code Committee has adopted the amendments to the Code proposed in Section 2 of the PCP.

**3. Acquisitions of interests in shares by a former potential competing offeror after Day 53**

**(a) Introduction**

3.1 In Section 3 of the PCP, the Code Committee proposed that, where a potential competing offeror has made a “no intention to bid” statement but nonetheless wishes to acquire interests in shares after “Day 53”, the Code should require that former potential offeror to forfeit the ability which it would otherwise have under Note 2 on Rule 2.8 to set aside its no intention to bid statement with the agreement of the board of the offeree company.

**(b) Summary of respondents’ views**

3.2 The respondents agreed with the proposal.

**(c) Amendments to the Code**

3.3 The Code Committee has adopted the amendments to Note 2 on Rule 2.8 in the form proposed in the PCP. The amended Note 2 on Rule 2.8 will therefore read as follows:

**“2. When the restrictions will no longer apply**

*The restrictions in Rule 2.8 will no longer apply if:*

*(a) the board of the offeree company so agrees. However, where the statement was made after the announcement by a third party of a firm intention to make an offer, the restrictions will only cease to apply with the agreement of the board of the offeree company if:*

*(i) that third party offer has been withdrawn or has lapsed;  
and*

*(ii) in the period following the making of the statement and prior to the third party offer being withdrawn or lapsing, neither the person who made the statement nor any person acting in concert with that person has acquired an interest in any shares of the offeree company;*

(b) *a third party announces a firm intention to make an offer for the offeree company;*

(c) *the offeree company announces a “whitewash” proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover;*

(d) *the Panel determines that there has been a material change of circumstances; or*

(e) *the statement was made outside an offer period and an event has occurred which was specified in the statement as being an event following which the restrictions set out in Rule 2.8 would cease to apply. If a person wishes to specify such an event in a statement to which Rule 2.8 will apply, the Panel should be consulted.*

*The Panel will normally regard a switch by a third party offeror from a scheme of arrangement to a contractual offer in accordance with Section 8 of Appendix 7, or an announcement of its firm intention to do so, as a material change of circumstances under paragraph (d). However, a switch from a contractual offer to a scheme of arrangement will not normally be regarded as a material change of circumstances.”.*

- 3.4 In addition, the Code Committee has adopted the minor amendments to Rule 2.8 and Note 1 on Rule 2.8 in the form proposed in the PCP, as set out in Appendix B.

**4. When a dispensation may be granted from having to make an announcement under Rule 2.2**

*(a) Introduction*

4.1 In Section 4 of the PCP, the Code Committee proposed that Note 4 on Rule 2.2 should be amended so that a potential offeror which has satisfied the Panel that it has ceased active consideration of an offer for the offeree company, and which has been granted a dispensation from having to make a “possible offer” announcement under Rule 2.2, should be restricted from:

- (a) doing any of the things set out in Rules 2.8(a) to (e) for a period of six months from the date on which the dispensation is granted; and, in addition
- (b) actively considering making an offer for the offeree company, making an approach to the board of the offeree company or acquiring any interests in shares in the offeree company for a period of three months from the date on which the dispensation is granted.

The Code Committee proposed that these restrictions should apply not only to the potential offeror but also to any person who acted, or subsequently came to act, in concert with it.

4.2 In addition, the Code Committee proposed that Note 4(b) on Rule 2.2 should be amended so that where, following the granting of a dispensation, the Panel requires an announcement to be made by the offeree company because:

- (a) rumour and speculation has continued or has been repeated; or
- (b) the Panel considers it necessary in order to prevent the creation of a false market,

that announcement should normally be required to identify the former potential offeror. At present, Note 4(b) on Rule 2.2 provides that such an announcement will not normally be required to identify the former potential offeror, unless it has been specifically identified in that rumour and speculation.

**(b) *Summary of respondents' views and the Code Committee's response***

- 4.3 The majority of respondents agreed that Note 4(a) on Rule 2.2 should be amended so as to restrict a former potential offeror which is subject to that Note from acquiring interests in shares of the offeree company during the period for which it is restricted or from actively considering making an offer for the offeree company. In addition, all of the respondents who expressed a view on the issue agreed that a former potential offeror should be restricted from making an approach to the board of the offeree company during the period for which it is restricted from actively considering making an offer for the offeree company.
- 4.4 The respondents agreed that the restrictions on a former potential offeror from actively considering an offer for the offeree company, from making an approach to the board of the offeree company and from acquiring an interest in shares in the offeree company should last for a period of three months from the date on which the dispensation was granted and, in addition, that the former potential offeror should be restricted from doing any of the things set out in Rules 2.8(a) to (e) for a period of six months from the date on which the dispensation was granted.
- 4.5 One respondent considered that the proposed restriction on acquisitions of interests in the offeree company's shares went too far, in that it would put a person subject to Note 4(a) on Rule 2.2 in a worse position than a person who had made a "no intention to bid" statement under Rule 2.8. The Code Committee considers it correct that a person who has been granted a dispensation under Note 4(a) on Rule 2.2 should be subject to more stringent restrictions than a person who has made a no intention to bid statement. The

Code Committee considers that this is a function of the significant dispensation granted to such a person.

- 4.6 Another respondent suggested that the restrictions in Note 4(a) on Rule 2.2 should be limited to the persons acting in concert with the former potential offeror and that they should not be extended to persons acting in concert with other members of the former potential offeror's concert party. The Code Committee has not accepted this suggestion. The persons to whom the restrictions in the amended Note 4(a) on Rule 2.2 apply are the same as the persons to whom the restrictions in Rule 2.8 apply. The reasons why the restrictions in Rule 2.8 apply to those persons were explained by the Code Committee in section 5.5 of PCP 2004/1 ("Put up or shut up" and no intention to bid statements).
- 4.7 The same respondent suggested that, in order to provide the Panel with greater flexibility, Note 4(a) on Rule 2.2 should stipulate that the Panel "will normally" consent to the restrictions which apply during the first three months following the granting of a dispensation being disapplied in the circumstances set out in paragraphs (b) to (d) of Note 2 on Rule 2.8, rather than stipulating that the Panel "may only" give its consent in such circumstances. The Code Committee accepts this suggestion. In addition, the Code Committee has also made minor amendments to the proposed paragraph (ii) of Note 4(a) on Rule 2.2.
- 4.8 Accordingly, the amended Note 4(a) on Rule 2.2 will read as follows:

***“4. When a dispensation may be granted***

*(a) The Panel may grant a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. If such a dispensation is granted, neither the potential offeror, nor any person who acted in concert with it, nor any person who is subsequently acting in concert with either of them, may:*

(i) *within six months of the dispensation having been granted, do any of the things set out in Rules 2.8(a) to (e); or*

(ii) *within three months of the dispensation having been granted, actively consider making an offer for the offeree company, make an approach to the board of the offeree company or acquire an interest in shares in the offeree company.*

*After the end of the period referred to in paragraph (ii) ~~t~~The Panel ~~may~~ will normally consent to the restrictions in paragraph (i) being set aside in the circumstances set out in paragraphs (a) to (d) of Note 2 on Rule 2.8, but during the period referred to in paragraph (ii) the Panel ~~may only~~ will normally consent to the restrictions in paragraphs (i) and (ii) being set aside only in the circumstances set out in paragraphs (b) to (d) of Note 2 on Rule 2.8.*

4.9 The same respondent drew attention to the proposal in paragraph 4.7 of the PCP that a former potential offeror should be restricted from making an approach to the board of the offeree company during the period for which it was restricted from actively considering making an offer for the company, i.e. for the first three months following the dispensation being granted. The respondent sought clarification as to the circumstances in which a person who was subject to the restrictions in Rule 2.8, but not also the restrictions in paragraph (ii) of Note 4(a) on Rule 2.2, would be able to make an approach to the board of the offeree company (including whether a former potential offeror which had been granted a dispensation under Note 4 of Rule 2.2 would be able to make such an approach in the second three month period following the date on which the dispensation was granted).

4.10 The Code Committee previously addressed this issue in paragraph 4.9.2 of RS 2004/1, in which the Code Committee adopted the current structure of Rule 2.8. At that time, Note 2 on Rule 2.8 set out the matters that a person would normally be permitted to specify in its no intention to bid statement as matters which would enable the statement to be set aside.<sup>1</sup> In paragraph 4.9.2 of RS 2004/1, the Code Committee stated that:

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<sup>1</sup> Note 2 on Rule 2.8 was subsequently amended so as to provide that the occurrence of the matters listed in paragraphs (a) to (d) of the Note would automatically enable a no intention to bid statement to be set aside

“... where [a] reservation for a recommendation [of the board of the offeree company] has been specifically made in the Rule 2.8 statement, the potential offeror has to be able to make some approach to the offeree. [The Code Committee] emphasises, however, that any potential offeror planning to make such an approach will have to consult the Panel in advance. If the initial approach is rebuffed, the potential offeror will not be able to make further approaches to the offeree during the lock-out period.”

The Code Committee continues to believe this approach to be correct and understands that this is consistent with the way in which the Executive applies Rule 2.8 in practice. The Code Committee has been informed by the Executive that it intends to publish a Practice Statement on this issue shortly.

- 4.11 All of the respondents who expressed a view on the issue disagreed with the proposal that Note 4(b) on Rule 2.2 should be amended so as to require that an announcement which the Panel requires to be made by the offeree company under Note 4(b) should normally identify the former potential offeror. Respondents considered that a presumption that the former potential offeror should be identified would adversely alter the balance of the provision, potentially deterring potential offerors from making approaches to offeree companies or resulting in rumour and speculation being generated in order to force the identification of the former potential offeror.
- 4.12 The Code Committee did not intend to alter the balance of the provision by means of the proposed amendment. However, the Code Committee acknowledges the rejection of the proposal by all of the respondents who expressly commented on the issue and has decided, on balance, not to proceed with the amendment. Nevertheless, the Code Committee notes that, if the Panel requires an announcement to be made under Note 4(b) on Rule 2.2, it is likely that the former potential offeror will have been specifically identified in rumour and speculation and, in such circumstances, the Panel will normally require it to be identified in any announcement required to be made by the offeree company.



- 4.13 The final paragraph of Note 4(b) on Rule 2.2 will therefore continue to read as follows:

*“Any such announcement made by the offeree company will not normally be required to identify the former potential offeror, unless it has been specifically identified in rumour and speculation.”*

**(c) *Amendments to the Code***

- 4.14 Save as described above, the Code Committee has adopted the amendments to Note 4 on Rule 2.2 as proposed in Section 4 of the PCP.

## 5. Resolution of competitive situations which continue to exist on Day 46 of the second offeror's offer timetable

### (a) *Introduction*

5.1 In Section 5 of the PCP, the Code Committee proposed that the default auction procedure which the Panel would normally impose in order to resolve a competitive situation which continues to exist on Day 46 of the second offeror's offer timetable should be a modified form of the "open" auction process outlined in PCP 7 (Resolution of competitive situations) (the "**Existing Default Procedure**").

5.2 In the PCP, the Code Committee considered whether it might be more appropriate for the default auction procedure to be based on an alternative model, such as a "closed" auction process based on the procedure used to resolve the competing offers for Corus Group plc in 2007 (the "**Corus model**") or a single-round sealed bid procedure. The Code Committee considered that, in the absence of the agreement of the parties to an offer, it would not be appropriate to impose on them a default auction procedure based on the Corus model or a single-round sealed bid procedure.

5.3 The Code Committee proposed that the modified form of the Existing Default Procedure (the "**Proposed Auction Procedure**") should be incorporated into the Code as a new Appendix 8. In addition, the Code Committee proposed certain amendments to Rule 32.5.

### (b) *Summary of respondents' views and the Code Committee's response*

#### (i) *The default auction procedure and its incorporation into the Code*

5.4 All but one of the respondents agreed that the default auction procedure should be based on the Existing Default Procedure. The remaining respondent favoured a single-round sealed bid procedure as the default auction procedure. All respondents agreed that the default auction procedure should be

incorporated into the Code as a new Appendix 8.

5.5 The Code Committee continues to believe that, for the reasons given in Section 5 of the PCP, the default auction procedure which the Panel should normally impose under Rule 32.5 should be the Proposed Auction Procedure.

(ii) *Number of bidding rounds*

5.6 The Code Committee proposed that the new Appendix 8 should set out an auction procedure involving a maximum of five rounds of bidding (following any offer made on or before 5.00pm on Day 46), taking place over the five business days immediately following Day 46. Currently, the Code does not provide for a specified number of bidding rounds but provides that the Panel may impose a final time limit, or “guillotine”, for announcing revisions to competing offers, taking into account representations made by the board of the offeree company, the revisions previously announced and the duration of the procedure.

5.7 The respondents agreed that the new Appendix 8 should provide for an auction process with a maximum of five rounds taking place over five consecutive business days.

(iii) *When a competing offeror is permitted to announce a revised offer*

5.8 Under the Proposed Auction Procedure as described in the PCP and as set out in the proposed new Appendix 8:

- (a) either or both of the competing offerors would be permitted to announce a revised offer in the first round of the auction;
- (b) in any subsequent round (other than in the fifth and final round), a competing offeror would be permitted to announce a revised offer only if the other competing offeror had announced a revised offer in the previous round; and

- (c) if the auction had not ended by then, both competing offerors would be permitted to announce a revised offer in the fifth and final round of the auction.

5.9 The respondents agreed with these elements of the Proposed Auction Procedure.

(iv) *Minimum increments*

5.10 In Section 5 of the PCP, the Code Committee stated that it did not believe that the Proposed Auction Procedure should require that any revised offer announced by a competing offeror should incorporate a minimum incremental increase above the value of the last revised offer announced by the other competing offeror.

5.11 All but one of the respondents agreed that the Proposed Auction Procedure should not require revised offers to incorporate minimum incremental increases to previous offers.

(v) *Formula offers*

5.12 The Code Committee proposed that the default auction procedure set out in the new Appendix 8 should include a provision expressly prohibiting competing offerors from increasing the value of the consideration offered by reference to the value of the other competing offeror's offer in the absence of agreement between the parties that such formula offers should be permitted.

5.13 The respondents agreed with this proposal.

(vi) *Fifth and final round: conditional offers*

5.14 The Code Committee proposed that, in the fifth and final round of an auction, a competing offeror ("**Offeror A**") should be permitted to submit a revised

offer to the Panel subject to the condition that it would be announced only if the other competing offeror (“**Offeror B**”) also submitted a revised offer. The Code Committee proposed that the only permissible condition would be the submission by Offeror B of a revised offer and that Offeror A would not be permitted to submit its revised offer conditional upon Offeror B submitting an offer which was higher than Offeror A’s previous offer.

- 5.15 All but one of the respondents agreed with the proposal. The remaining respondent considered that an offeror’s revised bid should be required to be announced whether or not the other offeror had submitted a revised bid. In the respondent’s view, the most appropriate means of drawing an auction to a conclusion in the interests of offeree company shareholders would be to ensure that an offeror put forward its final “no regrets” price, regardless of whether it was the offeror’s maximum price. In addition, the respondent noted that, under the proposed new Appendix 8, Offeror B, sensing that it was unlikely to win, might nonetheless make a minor adjustment to its own offer in order to ensure that Offeror A was forced to commit to any (conditional) revised offer which it submitted in the fifth round.
- 5.16 The Code Committee considers that the arguments of the respondent referred to above have merit. However, the Code Committee considers that offeree company shareholders would not necessarily obtain a better outcome if conditional revisions were prohibited in such circumstances as an offeror could be discouraged from making a revision in the final round (or making as high a revision as it might have done otherwise) as a result of concerns that it would be bidding against itself and therefore revising its offer unnecessarily. The Code Committee considers that permitting an offeror to revise its offer conditional upon the other offeror also revising its offer replicates as closely as possible the previous four rounds, and indeed the competitive process before the auction, whereby an offeror could revise its offer in response to a revision by a competing offeror. Although an offeror will not know the value of any revised offer submitted by the other offeror in the final round, the Code Committee considers that an offeror should be entitled to bid in the final round conditional on the other offeror also bidding in the final round.

5.17 The Code Committee acknowledges the concern raised by the respondent that an under-bidder could “game” the process by revising its offer in the final round by only a small amount such that its final offer remains below the higher offeror’s latest offer in order to force the higher offeror (if it has submitted a conditional revision) to increase its offer further. However, the Code Committee notes that an offeror would not be required to make its final offer conditional upon the other offeror also revising its offer, but that if it were to do so it would have to take into account the risk that the other offeror would not increase its previous offer by a material amount.

5.18 In the light of the above points, the Code Committee has concluded that an offeror should be entitled to submit a revised offer in the final round conditional upon the other offeror also submitting a revised offer.

*(vii) New forms of consideration*

5.19 The Code Committee proposed that the introduction of new forms of consideration during an auction should not be prohibited.

5.20 The respondents agreed with this proposal.

*(viii) Dealing in shares and procuring irrevocable commitments and letters of intent*

5.21 The Code Committee proposed that, during the auction procedure, the new Appendix 8 should prohibit dealings in the relevant securities of the offeree company by the parties to the offer, and persons acting in concert with them, and the procuring of irrevocable commitments and letters of intent. In addition, the Code Committee proposed that the new Appendix 8 should provide that, between the end of the auction procedure and the end of the offer period, a competing offeror and any person acting in concert with it must not acquire any interest in the shares of the offeree company if it would then be required to revise its offer.

5.22 The respondents agreed with these proposals.

(ix) *Announcements during the auction process*

5.23 The Code Committee proposed that the new Appendix 8 should prohibit announcements by a competing offeror or the offeree company (or persons acting in concert with either of them):

(a) in relation to, or which could reasonably be expected to affect the orderly operation of, the auction procedure; or

(b) in relation to the terms of either competing offeror's offer.

5.24 All but one of the respondents agreed with the proposal. The remaining respondent considered that the parties to an offer should be permitted to make announcements during an auction procedure, subject to their complying with their usual obligations under the Code. In particular, the respondent considered that it should be open to the offeree company to make announcements regarding the competing offers as and when it saw fit and that a competing offeror should continue to be able to make Code-compliant announcements about its own, and its competitor's, offer.

5.25 The Code Committee continues to believe that the parties to an offer should be restricted, during the auction, from making any announcement which could reasonably be expected to affect the orderly operation of the auction procedure. The Code Committee accepts, however, that the parties to the offer may legitimately wish to make announcements in relation to the terms of the competing offers, particularly given that a competing offeror may wish to introduce a new form of consideration during the auction procedure (and would be permitted to do so under the new Appendix 8). The Code Committee has therefore deleted the proposed restriction on such announcements from the final form of the new Appendix 8. Section 2(h)(i) of Appendix 8 will therefore read as follows:

**“(h) Except with the consent of the Panel, during the auction procedure, the competing offerors, the offeree company and any person acting in concert with any of them must not:**

**(i) make any public statement ~~in relation to, or which could reasonably be expected to affect the orderly operation of, the auction procedure or in relation to the terms of either competing offeror’s offer~~”.**

5.26 In addition to the points mentioned above, one respondent considered that it would be helpful if Rule 32.5 were to specify who would announce the terms of any auction procedure set by the Panel in accordance with Rule 32.5. Such terms will be announced by the Panel and the Code Committee has made a minor additional amendment to Rule 32.5 in order to make this clear, as set out in Appendix B.

**(c) *Amendments to the Code***

5.27 Save as described above, the Code Committee has adopted the new Appendix 8 and the amendments to Rule 32.5 as proposed in Section 5 of the PCP.



## 6. Potential controllers which are granted a Rule 9 waiver

### (a) *Introduction*

6.1 In Section 6 of the PCP, the Code Committee proposed that, where a potential new controller is granted a “whitewash” waiver under Note 1 of the Notes on Dispensations from Rule 9, the shareholder circular should be required to explain that the potential new controller will not be restricted from making an offer for the company following the approval of the proposals at the shareholders’ meeting unless it has entered into a standstill agreement with the company or it has made a no intention to bid statement (in which case, full details of the agreement or statement should be included in the shareholder circular and a copy published on a website in accordance with Rule 26.2). The Code Committee proposed to amend Note 1 of the Notes on Dispensations from Rule 9 and Section 4 of Appendix 1 accordingly.

6.2 In addition, the Code Committee proposed to amend Note 5 on the definition of “acting in concert”, which relates to standstill agreements, so as to codify the Executive’s application of that Note, as described in Practice Statement No 16. As proposed to be amended, Note 5 on the definition of “acting in concert” would read as follows:

#### **“5. *Standstill agreements***

*Agreements between a company, or the directors of a company, and a person which restrict that person or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or reducing the number of shares in which he or they are interested, may be relevant for the purpose of this definition. However, the Panel will not normally consider the parties to the agreement to be acting in concert provided that the agreement does not restrict any of the parties from either:*

(a) *accepting an offer for the company’s shares at any stage; or*

(b) *agreeing to accept any offer for the company’s shares either before or after its announcement.*

*The same approach will normally apply to an agreement to which the company's financial adviser or nominated adviser and/or its sponsor and/or underwriter, rather than the company itself (and/or its directors), is a party, for example, an agreement entered into at the time of an equity offering with a view to ensuring an orderly aftermarket in the company's shares.*

*Where parties intend to enter into standstill agreements to which neither the company (and/or its directors) nor its financial adviser or nominated adviser, its sponsor or underwriter is a party (for example, an agreement between two shareholders), or in any other cases of doubt, the Panel should be consulted in advance."*

**(b) Summary of respondents' views and the Code Committee's response**

- 6.3 The respondents agreed that the Code should be amended so as to require a whitewash transaction circular to state that the potential controller which is granted the Rule 9 waiver will not be restricted from making an offer for the company, unless it has entered into a standstill agreement with the company or has made a statement that it does not intend to make an offer.
- 6.4 In addition, the respondents agreed with the amendments to the Code proposed in Section 6 of the PCP, subject to a small number of minor drafting comments.
- 6.5 As regards the proposed requirement that any standstill agreement or no intention to bid statement should be published on a website in accordance with Rule 26.2, the Code Committee believes, on reflection, that this requirement should apply only to a standstill agreement. The relevant provision is currently Rule 26.2(b), which requires the publication on a website of any document which is referred to in the shareholder circular. In the case of a no intention to bid statement, the Code Committee believes that it would be sufficient for the details of the statement to be included in the shareholder circular (and for the potential controller, or its directors, to take responsibility for that statement in accordance with Rule 19.2) and that it is not necessary to require such a statement also to be published on a website. In the event that the potential controller did include a no intention to bid statement in a separate announcement, that announcement would, in any event, need to be published

on a website in accordance with Rule 30.4 (which, as explained in Section 7 below, will now become Rule 26.1). In order to make this clear, the Code Committee has made a minor amendment to Section 1(c) of Appendix 1, as set out in Appendix B.

- 6.6 One respondent queried whether the proposed new final paragraph of Note 5 on the definition of “acting in concert” would extend to any kind of agreement not to deal in an offeree company’s shares even if the offeree company (or its sponsor or financial adviser) was not a party to the agreement (for example, a confidentiality agreement between potential consortium members which included a “no dealing” provision or a standstill agreement as part of a “wall-crossing” arrangement).
- 6.7 The Code Committee considers that the new final paragraph of Note 5 on the definition of “acting in concert” would extend to such agreements. The purpose of the new final paragraph of Note 5 on the definition of “acting in concert” is to require parties who intend to enter into a standstill agreement to consult the Panel in order that the Panel may determine whether entering into the agreement may result in the parties concerned being regarded as acting in concert.

(c) *Amendments to the Code*

- 6.8 The Code Committee has adopted the amendments to Note 1 of the Notes on Dispensations from Rule 9 and Note 5 on the definition of “acting in concert”, as proposed in the PCP and as set out in Appendix B. In view of the point made in paragraph 6.5 above, the Code Committee has made certain changes to the proposed new paragraph 4(f) of Appendix 1, which will now read as follows:

**“4 WHITEWASH CIRCULAR**

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

...

(f) a statement that, in the event that the proposals are approved at the shareholders' meeting, the potential controllers will not be restricted from making an offer for the offeree company, unless the potential controllers have either:

(i) made a statement that they do not intend to make an offer (see Rule 2.8), in which case full details of the statement must be included in the circular; or

(ii) entered into an agreement with the company not to make an offer (see Note 5 on the definition of acting in concert), in which case full details of the standstill agreement must be included in the circular; or

~~(ii) made a statement that they do not intend to make an offer (see Rule 2.8),~~

~~in which case full details of such agreement or statement must be included in the circular and the agreement or statement published on a website in accordance with Rule 26.2;'~~

6.9 The Code Committee understands that, as indicated in Section 6 of the PCP, the Executive intends to withdraw Practice Statement No 16 on the date that the amendments adopted in this Response Statement come into effect.

**7. Disclosure of irrevocable commitments, letters of intent and interests in relevant securities**

**(a) *Introduction***

7.1 In Section 7 of the PCP, the Code Committee proposed that certain changes should be made to the Code's requirements regarding the disclosure of irrevocable commitments, letters of intent and interests in relevant securities.

**(b) *Summary of respondents' views and the Code Committee's response***

**(i) *Irrevocable commitments and letters of intent procured prior to an offer period***

7.2 In Section 7(c) of the PCP, the Code Committee proposed that Rule 2.11(b) should be amended so as to require that any irrevocable commitment or letter of intent procured prior to an offer period should be disclosed by no later than 12 noon on the business day following the identification of the offeror as such (and not in the offeror's Opening Position Disclosure), and that Rule 2.11(c) should be deleted. In addition, the Code Committee proposed to move the timing requirement for a disclosure made under Rule 2.11(a) out of Note 1 on Rule 2.11 and into Rule 2.11(a) itself.

7.3 Subject to certain minor comments, the respondents agreed with the proposals.

7.4 One respondent considered that Rule 2.11(b) should apply also to an offeree company which, prior to the commencement of an offer period, had procured an irrevocable commitment or a letter of intent not to accept an offer. The Code Committee considers that (as the respondent acknowledged) such circumstances are likely to be rare. However, the Code Committee accepts that Rule 2.11(b) should cater for this eventuality. The amended Rule 2.11(b) will therefore read as follows:

**“(b) ~~If an offeror,~~ 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 the details in accordance with the Notes on this Rule 2.11 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 it as an offeror as such (as appropriate).”.**

7.5 The same respondent considered that the requirements of the amended Rule 2.11(b) should be expressed to apply “except with the consent of the Panel”, so that the Panel would be able to agree to the non-disclosure of any irrevocable commitments or letters of intent which had lapsed prior to their being required to be disclosed. The Code Committee considers that it would not be necessary for a party to an offer to disclose an irrevocable commitment or letter of intent which had already lapsed prior to the deadline established by Rule 2.11(b) and does not therefore consider that this eventuality needs to be catered for in Rule 2.11(b).

(ii) *Firm offer announcements*

7.6 In Section 7(d) of the PCP, the Code Committee proposed that:

(a) Rule 2.7(c) should be amended (and a new Note 3 on Rule 2.7 introduced) so as to reinstate the requirement, which existed prior to 2010, for an offeror to disclose details of the interests and short positions in the relevant securities of the offeree company held by it, and by persons acting in concert with it, and of any irrevocable commitments and letters of intent which it has procured, in its firm offer announcement. These details are currently required to be disclosed in the offeror’s Opening Position Disclosure;

(b) Note 2(a)(i) on Rule 8 should be amended such that the deadline of “10 business days” would apply to an offeror’s Opening Position Disclosure regardless of when the offeror announced its firm intention to make an offer; and

- (c) Note 1 on Rule 2.11 should be amended so as to make clear that no separate disclosure is required when details of irrevocable commitments and letters of intent are disclosed in a firm or possible offer announcement made by no later than 12 noon on the business day following the date on which they are procured. Consequential amendments to Note 11(c) on the definition of “acting in concert”, Note 15 on Rule 8 and the Note on Rule 19.3 were also proposed.

7.7 The respondents agreed with these proposals.

(iii) *Removal of requirement to disclose details of irrevocable commitments and letters of intent in an Opening Position Disclosure*

7.8 In Section 7(e) of the PCP, the Code Committee proposed that paragraph (viii) of Note 5(a) on Rule 8 should be deleted so that details of irrevocable commitments and letters of intent would continue to be disclosed by means of an announcement made in accordance with Rule 2.11 but would no longer be required to be disclosed in an Opening Position Disclosure. This change would also require consequential amendments to be made to Note 7(d) on Rule 8.

7.9 The respondents agreed with this proposal.

(iv) *Conditions to irrevocable commitments*

7.10 In Section 7(f) of the PCP, the Code Committee proposed that Note 3(c) on Rule 2.11 should be amended so as to require the disclosure of an irrevocable commitment to include details of any outstanding conditions to which the irrevocable commitment is subject.

7.11 The respondents agreed with this proposal.

(v) *Potential offerors*

7.12 In Section 7(g) of the PCP, the Code Committee proposed that Note 12 on Rule 8 should be amended so as to make clear that it applies to any participant in a “formal sale process”. In addition, the Code Committee proposed consequential amendments to Note 1 on Rule 2.4, Note 2 on Rule 2.6 and the Note on Rule 7.1.

7.13 The respondents agreed with the proposed amendments, subject to certain minor drafting suggestions, which the Code Committee has accepted.

7.14 The amended Note 12 on Rule 8 will read as follows:

**“12. *Potential offerors***

*(a) If a potential offeror has been referred to in an announcement by the offeree company but has not been publicly identified as such, or if it is a participant in a formal sale process announced by the offeree company (regardless of whether it was a participant at the time of the announcement), the potential offeror and persons acting in concert with it must disclose any dealings in relevant securities of the offeree company after the time of that announcement (or, if later, after the time at which it becomes a participant in the formal sale process) in accordance with Rule 8.1(b) or Rule 8.4 respectively.*

*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](http://www.thetakeoverpanel.org.uk)).”.*

(vi) *Documents to be published on a website*

7.15 In Section 7(h) of the PCP, the Code Committee proposed that Rule 26.1(a) should be amended so as to make clear that the documents to which it applies are required to be published on a website only following the announcement of a firm offer (and not following an earlier date on which the document may have been entered into).



- 7.16 The respondents agreed with this proposal. In addition, one respondent suggested that it would be helpful if Rule 26 were to draw attention to the fact that, by virtue of Rule 30.4, the parties to an offer are required to publish announcements on a website from the commencement of an offer period, i.e. that the requirement for a website does not arise only upon the announcement of a firm offer.
- 7.17 The Code Committee has considered the relationship of Rule 30.4 and Rule 26 and notes that there is a degree of overlap between the two rules. The Code Committee has concluded that the two rules should be combined in order to put the Code's requirements with regard to documents, announcements and information which are required to be published on a website into one place and to remove duplicative provisions of the Code. This will involve some minor changes in the wording of what is currently Rule 30.4, which will become new Rule 26.1.
- 7.18 In addition, the Code Committee has amended the current Rule 30.4(c), which will become Rule 26.1(b), so as to provide that where any document, announcement or information which is to be published on a website includes the address of the website on which it will be published, that address must link either to the webpage on which the relevant document, announcement or information may be found or to a webpage which includes a clear link to the relevant webpage.
- 7.19 In addition, the Code Committee has deleted the current Note 1 on Rule 26, which requires a party to an offer to provide another party to the offer, on request, with copies of the documents to which Rule 26 relates. The Code Committee believes that this provision is no longer necessary, given that the documents in question will be readily available on the relevant party's website.
- 7.20 The Code Committee has therefore deleted Rule 30.4 and amended Rule 26, as set out in Appendix B. The Code Committee wishes to make clear that, in its

opinion, these changes do not materially alter the effect of the provisions in question. In addition, consequential amendments have been made to the various cross-references in the Code to the current Rules 26.1, 26.2 and 30.4. The relevant provisions of Rule 26, as they will read once the amendments have been implemented, are set out below:

**“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 relevant document, announcement or information:**

- (i) any document or information in relation to an offer sent to shareholders, persons with information rights or other relevant persons in accordance with Rule 30.1; or**
- (ii) any announcement (other than an announcement referred to in Note 8 below) published via a RIS (whether related to the offer or not).**

**(b) Any such document, announcement or information must include the address of the website on which it will be published. This address must be for either the webpage on which the relevant document, announcement or information may be found or a webpage which includes a clear link to the relevant webpage.**

**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 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):**

...

## **NOTES ON RULE 26**

### **1. Period for which documents etc. to be made available**

*Each document, announcement or information required to be published on a website under Rule 26 must continue to be made available on a website free of charge until the end of the offer (including any related competition reference period). Documents, announcements and information published following the end of the offer period which do not relate directly to the offer will not be required to be published on the website.*

### **2. Website to be used for publication**

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

### **3. “Read-only” format**

*Documents, announcements and information published on a website must be in a “read-only” format so that they may not be amended or altered in any way.*

### **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 23.2.*

...

### **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.*

## 8. *Announcements not required to be published on a website*

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

*(a) announcements in relation to notifications made pursuant to the rules of other regulatory regimes in respect of:*

*(i) transactions by directors or other persons discharging managerial responsibilities in respect of a company;*

*(ii) the acquisition or disposal of major shareholdings; and*

*(iii) disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares (including treasury shares); and*

*(b) announcements of the number of relevant securities in issue under Rule 2.10.”.*

*(vii) Announcement of numbers of relevant securities in issue*

7.21 In Section 7(i) of the PCP, the Code Committee proposed that the latest deadline for an announcement under Rule 2.10 by an offeror or the offeree company of the number of relevant securities in issue should be brought forward from 9.00am to 7.15am, in order to afford persons who are interested in relevant securities more time to comply with their disclosure obligations under Rule 8.

7.22 All but one of the respondents agreed with the proposed amendment. The remaining respondent argued that there was little evidence to suggest that the current (latest) deadline of 9.00am for the disclosure of Rule 2.10 information by an offeror or the offeree company created such significant problems as to merit the balance of convenience being altered against the parties to an offer and in favour of persons required to make disclosures under Rule 8.

7.23 The Code Committee understands from the Executive that, where announcements under Rule 2.10 have been made only shortly before the 9.00am deadline, this has often made it difficult for persons with a disclosure obligation under Rule 8.3 to comply with that obligation in a timely manner.

The Code Committee acknowledges that bringing forward the latest deadline for disclosures under Rule 2.10 will be marginally more inconvenient for the parties to an offer and their advisers than at present but continues to believe that this is a proportionate response to the problem which has been identified.

7.24 The Code Committee has therefore adopted the amendments to Rule 2.10 as proposed in the PCP.

*(viii) Disclosure of interests held by trusts*

7.25 In Section 7(j) of the PCP, the Code Committee proposed that Note 5(f) on Rule 8 should be amended so as to require that, where the owner or controller of an interest or short position in relevant securities is a trust, details of the trustee(s), the settlor and the beneficiaries of the trust must be disclosed. The Code Committee noted that, whilst the trustee(s) may have discretion with respect to decisions concerning the trust's positions or dealings in relevant securities, the settlor and/or the beneficiaries of the trust may have significant influence over such decisions.

7.26 Respondents generally supported the proposal. However, two respondents questioned the scope of the requirement.

7.27 One respondent suggested that the Code Committee might wish to adopt the concept of "significant control", as proposed to be introduced into the Companies Act 2006 by the Small Business, Enterprise and Employment Bill. Another respondent suggested that the Code's disclosure requirements should go no further than those set out in DTR 5 of the Financial Conduct Authority's Disclosure Rules and Transparency Rules. The same respondent queried why the identity of the settlor of the trust would be relevant unless the settlor controlled the voting rights of the relevant securities in question.

7.28 The Code Committee notes the provisions of the Small Business, Enterprise and Employment Bill and DTR 5. However, the Code Committee continues to believe that the Executive's current practice with regard to the disclosure of

trust arrangements should be codified, i.e. that the Code should require the disclosure of the trustee(s), the settlor and the beneficiaries of the trust.

- 7.29 In Section 7(j) of the PCP, the Code Committee proposed, in addition, to amend Note 5(f) on Rule 8 so as to make clear that, where the beneficiaries of a trust are a “defined group”, for example, members of a family, it will normally be sufficient to include a generic description of the group, rather than all beneficiaries being required to be named individually. One respondent suggested that, instead of referring to a “defined group”, Note 5(f) should refer to a “connected group”. The Code Committee has accepted this suggestion and the amended Note 5(f) on Rule 8 will therefore read as follows:

**“(f) Owner or controller details**

*For the purpose of disclosing identity, the owner or controller of any interest or short position in securities disclosed must be specified, in addition to any other details. The naming of nominees or vehicle companies is insufficient. If the owner or controller of the interest or short position is a trust, details of the trustee(s), the settlor and the beneficiaries of the trust must be disclosed. Where the beneficiaries are a ~~defined~~ connected group, for example, members of a family, a description of the group will normally be sufficient.*

*The Panel may require additional information to be disclosed when it appears to be appropriate, for example to identify other persons who have an interest in the securities in question. However, in the case of disclosures by fund managers of dealings on behalf of, or positions held for the account of, discretionary clients, the clients need not be named.”.*

- (ix) *Aggregation of dealings by connected principal traders*

- 7.30 In Section 7(k) of the PCP, the Code Committee proposed that Note 5(a) on Rule 8 should be amended so as to provide for the aggregated disclosure of dealings by a connected principal trader where the sole reason for the connection is that the principal trader is controlled by, controls or is under the same control as a connected adviser to an offeror, the offeree company or any person acting in concert with the offeror or the offeree company.

7.31 The respondents agreed with the proposed amendment.

*(c) Amendments to the Code*

7.32 Save as described above, the Code Committee has adopted the amendments to the Code proposed in Section 7 of the PCP.

*(d) New disclosure forms*

7.33 As noted in Section 7(1) of the PCP, the Executive has consulted on certain minor amendments to the Panel's disclosure forms. The new disclosure forms can be found in the "Disclosure" section of the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk) and should be used to disclose dealings and positions from the date on which the amendments to the Code adopted in this PCP come into effect.

## **8. Redemptions and purchases by offeree companies and offerors of their own securities**

### ***(a) Introduction***

8.1 In Section 8 of the PCP, the Code Committee proposed to make minor amendments to the Code with regard to redemptions and purchases by offeree companies and offerors of their own securities. In summary, the proposed changes involved:

- (a) the deletion of Rules 37.3 and 37.4 (and the deletion of the cross-references to Rules 37.3(c) and 37.4(b) in, respectively, Rules 25.4(d) and 24.4(d));
- (b) further to the deletion of Rule 37.3(a), the introduction of additional wording into Rule 21.1(b)(i) so as to provide that the redemption or purchase by an offeree company of its own shares would fall within the list of specific matters requiring the approval of a general meeting of shareholders;
- (c) the introduction of a new paragraph (g) into the definition of “dealings” so as to clarify, in summary, that the redemption or purchase by a company of its own relevant securities is a dealing in those relevant securities for the purposes of the Code; and
- (d) the introduction of a new Note 3(d) on Rule 8 so as to provide, in summary, that a disclosure under Rule 8 will not normally be required where an offeror or offeree company has disclosed in accordance with Rule 2.10 that it has redeemed or purchased its own relevant securities.

8.2 Currently, the first sentence of Rule 37.3(a) provides that, during the course of an offer, no redemption or purchase by the offeree company of its own shares may be effected without the approval of shareholders at a general meeting. The Code Committee proposed that this restriction should, in effect, be



replaced by the proposed new additional wording in Rule 21.1(b)(i), providing that, during the course of an offer, the board of the offeree company must not, without the approval of shareholders in general meeting, effect any redemption or purchase by the company of its own shares.

- 8.3 The third sentence of Rule 37.3(a) currently provides that, where it is felt that a redemption or purchase of shares is in pursuance of a contract entered into earlier or another pre-existing obligation, the Panel must be consulted and its consent to proceed without a shareholders' meeting obtained. As a result of moving the restriction on redemptions and purchases of a company's own shares to Rule 21.1(b)(i), such redemptions and purchases would become subject to paragraphs (A) and (B) of Rule 21.1, which provide as follows:

**“Where it is felt that:**

**(A) the proposed action is in pursuance of a contract entered into earlier or another pre-existing obligation; or**

**(B) a decision to take the proposed action had been taken before the beginning of the period referred to above which:**

**(i) has been partly or fully implemented before the beginning of that period; or**

**(ii) has not been partly or fully implemented before the beginning of that period but is in the ordinary course of business,**

**the Panel must be consulted and its consent to proceed without a shareholders' meeting obtained.”.**

**(b) *Summary of respondents' views and the Code Committee's response***

- 8.4 Respondents generally supported the proposal. However, one respondent considered that redemptions of shares by an offeree company were already sufficiently regulated and advocated a more flexible approach.

- 8.5 The Code Committee believes that redemptions and purchases by a company of its own shares during the course of an offer should continue to be subject to

shareholder approval and notes that the additional restriction to be introduced into Rule 21.1(b)(i) does no more than replicate the restriction which is currently to be found in Rule 37.3(a).

- 8.6 Another respondent noted that, in paragraph 8.4 of the PCP, the Code Committee had stated that it considered it appropriate that the offeree company should be able to seek the consent of the Panel to proceed without a shareholders' meeting where a decision to purchase or redeem its own shares had been taken before the beginning of the period specified in Rule 21.1. The respondent noted that the provisions of paragraphs (A) and (B) of Rule 21.1 incorporated potentially greater flexibility than the current third sentence of Rule 37.3(a) and queried whether this represented a change of policy.
- 8.7 The Code Committee confirms that no change of policy is intended by, in effect, moving the current Rule 37.3(a) into Rule 21.1.

(c) *Amendments to the Code*

- 8.8 In view of the above, the Code Committee has adopted the amendments to the Code proposed in Section 8 of the PCP.

**9. Circulars published by persons acting in concert with an offeror or offeree company**

**(a) Introduction**

9.1 In Section 9 of the PCP, the Code Committee proposed certain amendments to Note 4 on Rule 20.1, Note 5 on Rule 19.1 and Section 6 of Appendix 2. The principal proposal was, in effect, the replacement of the reference in Note 4 on Rule 20.1 to the “brokers or advisers” to a party to the offer with a reference to “connected advisers to, or other persons acting in concert with” such a party.

**(b) Summary of respondents’ views**

9.2 The respondents agreed with the proposal.

**(c) Amendments to the Code**

9.3 The Code Committee has adopted the amendments to Note 4 on Rule 20.1, Note 5 on Rule 19.1 and Section 6 of Appendix 2 as proposed in Section 9 of the PCP. The first two paragraphs of the amended Note 4 on Rule 20.1 will therefore read as follows:

**“4. Circulars published by connected advisers etc.**

*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 documents 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.”*

## **10. “No increase” and “no extension” statements**

### **(a) *Introduction***

10.1 In Section 10 of the PCP, the Code Committee proposed that:

- (a) Note 2 on Rule 32.2 and Note 2 on Rule 31.5 should be amended so as to require an offeror to consult the Panel if it wishes to include a reservation to its “no increase” or “no extension” statement; and
- (b) Note 5 on Rule 32.2 and Note 5 on Rule 31.5 should be amended so as to provide that an offeror may only include a reservation to a “no increase” or “no extension” statement which relates to material new information announced by the offeree company after “Day 39” if the “no increase” or “no extension” statement is itself made after Day 39.

### **(b) *Summary of respondents’ views, the Code Committee’s response and amendments to the Code***

10.2 The PCP sought comments on the proposed amendments described above. No substantive comments were received. However, one respondent suggested that it would be helpful if it were made clear that the three types of reservation specifically referred to in the Notes on Rules 32.2 and 31.5 - i.e. reservations relating to (a) a competitive situation arising, (b) the recommendation of the increased or improved offer by the board of the offeree company, and (c) an announcement of the kind referred to in Rule 31.9 after Day 39 - was not an exhaustive list of the reservations which may be included by an offeror.

10.3 The Code Committee agrees that this would be a helpful clarification and has introduced a new paragraph into each of the current Note 2 on Rule 32.2 and the current Note 2 on Rule 31.5 to this effect. In addition, the Code Committee has made a number of amendments to Rules 32.2 and 31.5, and the Notes thereon, with a view to making the requirements of those provisions clearer, as set out in Appendix B. In addition, the Code Committee has made

equivalent amendments to those parts of Rule 2.5 which are similar in structure to Rules 32.2 and 31.5, as also set out in Appendix B. The Code Committee wishes to make clear that, in its opinion, these changes do not materially alter the effect of the provisions in question.

- 10.4 Rule 32.2, as it will read once the amendments have been implemented, is set out below:

**“32.2 NO INCREASE STATEMENTS**

**(a) A “no increase statement” is a statement as to the finality of an offer, including a statement that the offer will not be “increased”, “raised”, “amended”, “revised”, “improved” or “changed” and any similar expression.**

**(b) If an offeror (or its directors, officials or advisers) makes a “no increase statement”, and that statement is not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to amend the terms of its offer in any way, even if the amendment would not result in an increase of the value of the offer (eg the introduction of a lower securities exchange alternative), except:**

**(i) where it specifically reserved the right to do so in certain circumstances at the time the no increase statement was made and those circumstances subsequently arise; or**

**(ii) in wholly exceptional circumstances.**

**(c) If an offeror wishes to include a reservation to a no increase statement, the Panel must be consulted.**

***NOTES ON RULE 32.2***

***1. Reservation of the right to set a no increase statement aside***

*(a) A no increase statement must not be subject to a reservation to set the statement aside which depends solely on subjective judgements by the offeror or its directors or the fulfilment of which is in their hands.*

*(b) The first document published in connection with an offer in which mention is made of the no increase statement must contain prominent reference to any reservation to set it aside (precise details of which must also be included in the document). Any subsequent mention by the offeror of the no increase statement must be*

*accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details.*

*(c) Notes 3 and 4 describe examples of specific types of reservation to set a no increase statement aside. However, other types of reservation may also be made (for example, a reservation relating to the recommendation of an increased or improved offer by the board of the offeree company), provided that they comply with the requirements of this Note 1.*

## **2. Wholly exceptional circumstances**

*If the right to set aside a no increase statement has not been specifically reserved, the offeror will be allowed to increase or amend its offer only in wholly exceptional circumstances. The agreement of the board of the offeree company or the fact that the offer is wholly unconditional will not be regarded as wholly exceptional circumstances.*

## **3. Competitive situations**

*If the circumstances specified in a reservation made in accordance with Rule 32.2(b)(i) relate to a competitive situation arising and such a situation arises, an offeror which wishes to set aside its no increase statement must:*

*(a) make an announcement to this effect as soon as possible (and in any event within 4 business days after the day of the firm announcement of the competing offer) and send a notice to offeree company shareholders and persons with information rights at the earliest opportunity; and*

*(b) give any shareholders who accepted the offer after the date of the no increase statement a right of withdrawal for a period of 8 days following the date on which the announcement is made.\**

*(For the purpose of this Note, a competitive situation will normally arise following a public announcement of the existence of a new offeror or potential offeror whether publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)*

## **4. Rule 31.9 announcements†**

*An offeror may reserve the right to set aside a no increase statement in the event of the offeree company making an announcement of the kind referred to in Rule 31.9 after the 39th day following the publication of the initial offer document only if the no increase statement is made after that day. If such an announcement is subsequently made by the offeree company and the offeror wishes to set aside its no increase statement, the offeror must make an announcement to this effect as*

*soon as possible (and in any event within 4 business days after the date of the offeree company announcement) and send a notice to offeree company shareholders and persons with information rights at the earliest opportunity.*

#### **5. Schemes of arrangement**

*A switch to or from a scheme of arrangement will not normally, of itself, be regarded as an amendment which would be precluded by an earlier no increase statement in relation to the value or type of consideration offered. Therefore, it is not necessary for an offeror making such a statement specifically to reserve the right to switch its offer structure.”.*

- 10.5 One respondent also noted that the language of the proposed new second sentence of Note 2 on Rule 32.2 (i.e. the new Note 1(a) on Rule 32.2, as set out in paragraph 10.4 above) was not identical to that in Rule 13.1, on which it was based. The point was that, whereas Rule 13.1 refers to the subjective judgements of the directors of the relevant party to the offer, the proposed new provision referred to the subjective judgements of “the offeror or its directors”. The Code Committee notes that a party to an offer may not always be a body corporate and may not, therefore, have directors. The Code Committee considers that Rule 13.1 should apply to a party to an offer regardless of whether it has directors and has therefore amended Rule 13.1 so as to conform with the new Note 1(a) on Rule 32.2, as set out in Appendix B.

## **11. Independent advice provided to the board of the offeree company**

### **(a) *Introduction***

11.1 In Section 11 of the PCP, the Code Committee proposed amendments to Rule 3.1 and Note 3 on Rule 3.1 so as better to reflect the distinction that exists between the roles of:

- (a) an independent adviser appointed under Rule 3.1 to provide financial advice on the offer to the board of the offeree company; and
- (b) the board of the offeree company, which is required to give its opinion on the offer to the offeree company shareholders, having taken into account all factors which it considers relevant.

11.2 The main proposal was, in summary, that Rule 3.1 should be amended so as to make it clear that the principal role of the independent adviser is to advise the board of the offeree company as to whether the financial terms of the offer (including any alternative offers) are “fair and reasonable”.

### **(b) *Summary of respondents’ views***

11.3 All but one of the respondents agreed with the proposed amendments.

11.4 The remaining respondent considered that the Code should not prescribe the form of advice given by an independent adviser. In addition, the respondent considered that stipulating the nature of the financial advice to be obtained by the board of the offeree company, and given by the independent adviser, would be inconsistent with the statement in Section 2 of the Introduction to the Code that the Code is not concerned with the financial or commercial advantages or disadvantages of a takeover.



(c) *The Code Committee's response*

- 11.5 The purpose of Rule 3.1 is to require the board of the offeree company to obtain competent independent advice on an offer and to require the substance of that advice to be made known to offeree company shareholders (see also Rule 25.2(b)).
- 11.6 The Code Committee considers that it is important that the advice provided to the board of the offeree company in accordance with Rule 3.1 is clear and that it is in terms which will help the shareholders in the offeree company to reach a properly informed decision on the offer. The Code Committee considers that this will be the case when the advice provided by an independent adviser is whether the financial terms of the offer are “fair and reasonable”. The Code Committee believes that this long-established formulation is well understood by shareholders and other market participants. As indicated in Section 11 of the PCP, generally, although not invariably, where the board of the offeree company is recommending that offeree company shareholders should accept the offer, the advice which will have been provided to the board of an offeree company will be that the offer is “fair and reasonable”.
- 11.7 The Code Committee does not consider, however, that an independent adviser's advice should be required to be that the financial terms of an offer are either “fair and reasonable” or “not fair and reasonable”, provided that the advice is both clear and helpful to offeree company shareholders. For example, in the context of a unilateral offer, if the independent adviser's advice was that an offer “materially undervalues the offeree company and its future prospects” (or similar), the Code Committee considers that it would not also be necessary for the adviser to state that the offer was “not fair and reasonable”.
- 11.8 The Code Committee also recognises that, as envisaged by Note 3 on Rule 3.1 (as proposed to be amended), there may be circumstances in which the independent adviser is unable to advise the board of the offeree company whether the financial terms of an offer are, or are not, fair and reasonable. The

Code Committee considers that, in such circumstances, the fact that the independent adviser is unable to advise whether the financial terms of the offer are, or are not, “fair and reasonable” would need expressly to be made known to offeree company shareholders and, as provided in Note 3 on Rule 3.1, an explanation given in the offeree board circular.

- 11.9 In addition, the Code Committee does not consider that, by requiring the independent adviser to advise whether the financial terms of an offer are “fair and reasonable”, the Panel would be concerning itself with the financial or commercial advantages or disadvantages of a takeover. It is for the offeror to decide (subject to the price-setting provisions in Rules 6, 9.5 and 11) what price to offer to offeree company shareholders and for shareholders, having been provided with sufficient information to do so, to decide whether to accept any offer which is made to them.

*(d) Amendments to the Code*

- 11.10 In view of the above, the Code Committee has adopted the amendments to Rule 3.1 and Note 3 on Rule 3.1 as proposed in Section 11 of the PCP, subject to a minor modification, as follows:

**“3.1 BOARD OF THE OFFEREE COMPANY**

**The board of the offeree company must obtain competent independent advice as to whether the financial terms of any offer (including any alternative offers) are fair and reasonable and the substance of such advice must be made known to its shareholders.**

***NOTES ON RULE 3.1***

...

- 3. *Where the independent adviser is unable to advise whether the financial terms of the offer are fair and reasonable***

*If the independent adviser is unable to advise the board of the offeree company whether the financial terms of an offer (or any alternative offers) are, or are not, fair and reasonable, this must be made known to offeree company shareholders and an explanation given in the offeree board circular. The Panel should be consulted in advance*

*about the explanation which is to be given. (See also Note 2 on Rule 25.2.).”*

## **12. Aggregation of interests across a group**

- 12.1 In Section 12 of the PCP, the Code Committee proposed amendments to the second paragraph of Note 16 on Rule 9.1 and to Note 1(c) on Rule 7.2 so as to make it clear that the relief from the 30% mandatory bid threshold in Rule 9.1 for principal traders within a multi-service financial organisation, who are normally permitted to hold up to an additional 3% of a company's shares without triggering an obligation to make a mandatory bid, applies only to shares which are acquired and held by the principal trader in a client-serving capacity.
- 12.2 The respondents agreed with the proposals and the Code Committee has therefore adopted the amendments proposed in the PCP, as set out in Appendix B.

## **APPENDIX A**

### **Respondents to PCP 2014/1**

**(excluding those who submitted comments on a confidential basis)**

1. Association for Financial Markets in Europe
2. BDO LLP
3. GC100 Group
4. Institute of Chartered Accountants in England and Wales
5. Quoted Companies Alliance
6. 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

## APPENDIX B

### Amendments to the Code

*[except as otherwise stated, underlining indicates new text and striking-through indicates deleted text]*

#### DEFINITIONS

##### Acting in concert

...

#### NOTES ON ACTING IN CONCERT

...

##### 5. *Standstill agreements*

*Agreements between a company, or the directors of a company, and a person which restrict that person or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or reducing the number of shares in which he or they are interested, may be relevant for the purpose of this definition. However, the Panel will not normally consider the parties to the agreement to be acting in concert provided that the agreement does not restrict any of the parties from either:*

*(a) accepting an offer for the company's shares at any stage; or*

*(b) agreeing to accept any offer for the company's shares either before or after its announcement.*

*The same approach will normally apply to an agreement to which the company's financial adviser or nominated adviser and/or its sponsor and/or underwriter, rather than the company itself (and/or its directors), is a party, for example, an agreement entered into at the time of an equity offering with a view to ensuring an orderly aftermarket in the company's shares.*

*Where parties intend to enter into standstill agreements to which neither the company (and/or its directors) nor its financial adviser or nominated adviser, its sponsor or underwriter is a party (for example, an agreement between two shareholders), or in any other cases of doubt, the Panel should be consulted in advance.*

*~~In cases of doubt, the Panel should be consulted.~~*

##### 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 2.11 ~~and Note 5(a) on Rule 8.~~*

...

## **Dealings**

A dealing includes the following:

...

(f) ... ; ~~and~~

(g) the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company or an offeror; and

(gh) ...

## **Rule 2.2**

### **2.2 WHEN AN ANNOUNCEMENT IS REQUIRED**

...

#### **NOTES ON RULE 2.2**

...

#### **4. When a dispensation may be granted**

(a) *The Panel may grant a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. ~~After~~ If such a dispensation has been granted, neither the potential offeror, nor any person who acted in concert with it, nor any person who is subsequently acting in concert with either of them, may:*

*(i) within six months of the dispensation having been granted, do any of the things set out in Rules 2.8(a) to (e); or*

*(ii) within three months of the dispensation having been granted, ~~not~~ actively consider making an offer for the offeree company, make an approach to the board of the offeree company or acquire an interest in shares in the offeree company for a period of six months and will be treated as having made a statement to which Rule 2.8 applies.*

*After the end of the period referred to in paragraph (ii) ~~t~~The Panel ~~may~~ will normally consent to ~~the~~ these restrictions in paragraph (i) being set aside in*

*the circumstances set out in paragraphs (a) to (d) of Note 2 on Rule 2.8, but during the period referred to in paragraph (ii) the Panel will normally consent to the restrictions in paragraphs (i) and (ii) being set aside only in the circumstances set out in paragraphs (b) to (d) of Note 2 on Rule 2.8. The Panel may also, at the request of the offeree company, consent to the potential offeror recommencing active consideration of an offer but such consent will not normally be given within three months of the dispensation having been granted.*

(b) Where a potential offeror to which a dispensation has been granted under paragraph (a) has ceased actively to consider making an offer, the Panel may nonetheless require an announcement to be made where:

- (i) any rumour and speculation continues or is repeated; and/or
- (ii) it considers that this is otherwise necessary in order to prevent the creation of a false market.

Any such announcement made by the offeree company will not normally be required to identify the former potential offeror, unless it has been specifically identified in rumour and speculation.

## **Rule 2.4**

### **2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER**

...

#### **NOTES ON RULE 2.4**

##### **1. Consequences of subsequent acquisitions of interests in shares**

*The acquisition of an interest in offeree company shares by a potential offeror whose existence has been announced (whether publicly identified or not), or which is a participant in a formal sale process, or by any person acting in concert with it may require immediate announcement by the potential offeror under the Note on Rule 7.1. See also Note 12 on Rule 8.*

## **Rule 2.5**

### **2.5 TERMS AND PRE-CONDITIONS IN POSSIBLE OFFER ANNOUNCEMENTS**

(a) **The Panel must be consulted in advance if, prior to the announcement of a firm intention to make an offer, any person proposes to make a statement in relation to the terms on which an offer might be made for the offeree company. If any such statement is made by or on behalf of a potential offeror, (or its directors, officials or advisers) makes**



such a statement and it is not withdrawn immediately withdrawn—if incorrect, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made ~~and only in wholly exceptional circumstances will the offeror be allowed subsequently not to be so bound, unless, except where~~ it specifically reserved the right not to be so bound in certain circumstances at the time the statement was made and those circumstances subsequently arise ~~(see Note 1)~~ or in wholly exceptional circumstances. In particular:

...

## NOTES ON RULE 2.5

### 1. *Reservation of the right to set a statements aside*

*The first announcement in which a statement subject to Rule 2.5(a) is made must contain prominent reference to any reservation to set it aside (precise details of which must be included). Any subsequent mention by the potential offeror of the statement must be accompanied by a reference to the reservation.*

~~*Where a potential offeror has referred in a statement subject to Rule 2.5(a) to the level of consideration to be paid if an offer is made, that potential offeror will not be allowed subsequently to make an offer for the offeree company at a lower level of consideration other than in wholly exceptional circumstances, or if there has occurred an event which the potential offeror specified in the statement as an event which would enable it to set aside the level of consideration referred to.*~~

*Where a potential offeror has reserved the right to vary the form and/or mix of the consideration referred to in a statement subject to Rule 2.5(a) (but remains bound to a specified minimum level of consideration) and exercises that right, the value of any offer that is made subsequently must be the same as or better than the value of the consideration referred to in that statement, calculated as at the time of the announcement of the firm intention to make an offer. If, during the period ending when the market closes on the first business day after the announcement of the firm intention to make an offer, the value is not maintained, the Panel will be concerned to ensure that the offeror acted with all reasonable care in determining the consideration. If there is a restricted market in the securities offered, or if the amount of securities to be issued of a class already admitted to trading is large in relation to the amount already issued, the Panel may require justification of prices used to determine the value of the offer.*

~~*Where a potential offeror has made a statement of the kind referred to in Rule 2.5(a)(ii), it will not be permitted to make an offer at a higher level of consideration unless there has occurred an event which the potential offeror specified in the statement as an event that would enable it to do so.*~~

*Once it has announced a firm intention to make an offer, an offeror will not be permitted to exercise any right it had previously reserved either to set aside a statement in relation to the level of consideration that it might offer or to vary the form and/or mix of the consideration.*

## **Rule 2.6**

### **2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT**

...

**(d) When an offeror has announced a firm intention to make an offer and it has been announced that a publicly identified potential offeror might make a competing offer (whether that announcement was made prior to or following the announcement of the first offer), the potential offeror must, by a date in the later stages of the offer period to be announced by the Panel 5.00 pm on the 53rd day following the publication of the first offeror's initial offer document, either:**

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or**
- (ii) announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies.**

**(See Section 4 of Appendix 7 where the first offeror is proceeding by means of a scheme of arrangement.)**

**(e) When an offeror has announced a firm intention to make an offer and the offeree company subsequently refers to the existence of a potential competing offeror which has not been identified, the potential competing offeror so referred to must, by a date in the later stages of the offer period to be announced by the Panel 5.00 pm on the 53rd day following the publication of the first offeror's initial offer document, either:**

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or**
- (ii) confirm to the offeree company that it does not intend to make an offer, in which case the offeree company must promptly announce that fact and the potential competing offeror will ~~then~~ be treated as if it had then made a statement to which Rule 2.8 applies.**

**(See Section 4 of Appendix 7 where the first offeror is proceeding by means of a scheme of arrangement.)**

**NOTES ON RULE 2.6**

...

**2. Formal sale process**

*Where, prior to an offeror having announced a firm intention to make an offer, the board of the offeree company announces that it is seeking one or more potential offerors for the offeree company by means of a formal sale process, the Panel will normally grant a dispensation from the requirements of Rules 2.4(a) and (b) (but see Note 12 on Rule 8) and Rule 2.6(a), such that any potential offeror which agrees with the offeree company to participate in that process would not be required to be publicly identified under Rule 2.4(a) or (b) and would not be subject to the 28 day deadline referred to in Rule 2.6(a), for so long as it is participating in that process. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.*

**3. ~~Date by which announcement required~~**

*~~Where the first offeror is proceeding by means of a contractual offer, the date by which an announcement will be required to be made by or in respect of a potential competing offeror under Rule 2.6(d) or (e) will normally be a date which is on or around 10 days prior to the final day on which the first offeror's offer is capable of becoming or being declared unconditional as to acceptances.~~*

*~~Where the first offeror is proceeding by means of a scheme of arrangement, see Section 4 of Appendix 7.~~*

**Rule 2.7****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:**

...

**(v) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or in respect of which it has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see Note 5 on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to**

**sell, any delivery obligation or right to require another person to purchase or take delivery, must also be stated;**

**(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);**

**(vii) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold and details of any financial collateral arrangements which the offeror or any person acting in concert with it has entered into (see Note 4 on Rule 4.6);**

**(viii) ... ;**

**(vix) ... ;**

**(vix) ... ; and**

**(viii)—confirmation that the offeror is on the same day disclosing, or has previously disclosed, the details required to be disclosed by it under Rule 8.1(a) and, where such disclosure is being made on the same day but (in accordance with Note 2(a)(i) on Rule 8) may not include all relevant details in respect of all persons acting in concert with the offeror, confirmation that a further disclosure in accordance with Rule 8.1(a) and Note 2(a)(i) on Rule 8 will be made as soon as possible; and**

**(ixxi) a list of the documents published on a website in accordance with Rule 26.1–26.2 and the address of the website on which the documents are published.**

### ***NOTES ON RULE 2.7***

...

#### **3. Persons acting in concert with the offeror**

***If an offeror announces a firm intention to make an offer before the deadline for its Opening Position Disclosure (see Note 2(a)(i) on Rule 8), it may not be practicable in the time available to have made enquiries of all persons acting in concert with it in order to include all relevant details in respect of such persons in the announcement. In such circumstances, this fact should be stated and all relevant details included in the Opening Position Disclosure. The Panel should be consulted in all such cases.***

## Rule 2.8

### 2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

A person making a statement that he does not intend to make an offer for a company should make the statement as clear and unambiguous as possible. Except in the circumstances described in Note 2 or otherwise with the consent of the Panel, neither the person making the statement, nor any person who acted in concert with that person, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:

...

#### NOTES ON RULE 2.8

##### 1. *Prior consultation*

*Any person considering making such a statement should consult the Panel in advance, ~~particularly if it is intended to include specific reservations to set aside the statement.~~*

##### 2. *When ~~a statement may be set aside~~ the restrictions will no longer apply*

*~~Except with the consent of the Panel, a statement to which~~ The restrictions in Rule 2.8 ~~applies may be set aside only~~ will no longer apply if:*

*(a) ~~the board of the offeree company so agrees to the statement being set aside. However, ~~where the statement was made at any time following after the announcement by a third party of a firm intention to make an offer, the statement may not normally be set aside~~ restrictions will only cease to apply with the agreement of the board of the offeree company ~~unless if:~~~~*

*(i) that third party offer has been withdrawn or has lapsed; and*

*(ii) in the period following the making of the statement and prior to the third party offer being withdrawn or lapsing, neither the person who made the statement nor any person acting in concert with that person has acquired an interest in any shares of the offeree company;*

*(b) a third party announces a firm intention to make an offer for the offeree company;*

*(c) the offeree company announces a “whitewash” proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover;*

*(d) the Panel determines that there has been a material change of circumstances; or*

(e) *the statement was made outside an offer period and an event has occurred which was specified in the statement as being an event following which the restrictions set out in Rule 2.8 would enable the statement to be set aside (see Note 1) cease to apply. If a person wishes to specify such an event in a statement to which Rule 2.8 will apply, the Panel should be consulted.*

*The Panel will normally regard a switch by a third party offeror from a scheme of arrangement to a contractual offer in accordance with Section 8 of Appendix 7, or an announcement of its firm intention to do so, as a material change of circumstances under paragraph (d). However, a switch from a contractual offer to a scheme of arrangement will not normally be regarded as a material change of circumstances.*

## **Rule 2.9**

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

...

#### **NOTES ON RULE 2.9**

...

#### **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(~~ab~~) (~~Note 1(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.*

## **Rule 2.10**

### **2.10 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE**

**When an offer period begins, the offeree company must announce, as soon as possible and in any case by ~~9.00~~ 7.15 am on the next business day, details of all classes of relevant securities issued by the company, together with the numbers of such securities in issue. An offeror or publicly identified potential offeror must also announce the same details relating to its relevant securities as soon as possible and in any case by 9.00 7.15 am on the business day following any announcement identifying it as an offeror or potential offeror, unless it has stated that its offer is likely to be solely in cash.**

...

## Rule 2.11

### 2.11 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 the details in accordance with the Notes on this Rule 2.11 by no later than 12 noon on the following business day.

(b) If any party to ~~the~~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 the details in accordance with the Notes on this Rule 2.11 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), and/or prior to midnight on the day before an Opening Position Disclosure is made under Rule 8.1(a) or 8.2(a), the details must be disclosed in the Opening Position Disclosure made by the relevant party to the offer (see Note 5(a) on Rule 8 and the Notes on this Rule 2.11).

~~(c) — If, during the offer period and prior to midnight on the day before an Opening Position Disclosure is made under Rule 8.1(a) or 8.2(a), a party to the offer or any person acting in concert with it procures an irrevocable commitment or a letter of intent and the details are disclosed in accordance with Rule 2.11(a), that disclosure must also include details of any other commitments or letters which have been procured prior to the date of the disclosure and which have not previously been disclosed.~~

~~(dc) ...~~

~~(ed) ...~~

#### NOTES ON RULE 2.11

##### 1. Timing of dDisclosure in firm offer announcement

~~A disclosure required by Rule 2.11(a) must be made by no later than 12 noon on the business day following the date of the transaction.~~

~~No separate disclosure by an offeror is required under Rule 2.11(a) wWhere the relevant information is details required to be disclosed under Note 3 on Rule 2.11 are, pursuant to Rule 2.7(c)(vi), included in an announcement of a firm intention to make an offer made under Rule 2.7 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 is required under Rule 2.11(a) or (b).*

*Similarly, where the details required to be disclosed under Note 3 on Rule 2.11 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 is required under Rule 2.11(b).*

...

### **3. Contents of disclosure**

*A disclosure 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:*

...

*(c) in respect of an irrevocable commitment, any outstanding conditions to which it is subject and the circumstances (if any) in which it will cease to be binding; and*

*(d) in the case of an irrevocable commitment or a letter of intent procured prior to the announcement of a firm intention to make an offer, the value-price (and any other material terms) of the possible offer in respect of which the commitment or letter has been procured, which terms the potential offeror will then be bound to in accordance with ~~(See Rule 2.5(a).)~~*

...

## **Rule 2.12**

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

...

#### **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, 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)~~ 26.1.

## Rule 3.1

### 3.1 BOARD OF THE OFFEREE COMPANY

The board of the offeree company must obtain competent independent advice ~~on~~ as to whether the financial terms of any offer (including any alternative offers) are fair and reasonable and the substance of such advice must be made known to its shareholders.

#### NOTES ON RULE 3.1

...

3. ~~When no recommendation is given~~ Where the independent adviser is unable to advise whether the financial terms of the offer are fair and reasonable

~~When If the independent adviser considers it impossible to express a view on the merits is unable to advise the board of the offeree company whether the financial terms of an offer (or any alternative offers) are, or are not, fair and reasonable, or to give a firm recommendation in its advice to the board of the offeree company, this must be made known to offeree company shareholders stated and an explanation given in the offeree board circular, including the arguments for acceptance or rejection, emphasising the important factors. The Panel should be consulted in advance about the explanation which is to be given. (See also Note 2 on Rule 25.2.)~~

~~The Panel should be consulted in such cases.~~

## Rule 7.1

### 7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED

...

#### NOTE ON RULE 7.1

##### *Potential offerors*

The requirement of this Rule to make an immediate announcement applies to any potential offeror whose existence has been referred to in any announcement (whether publicly identified or not), or which is a participant in

a formal sale process (regardless of whether it was a participant at the time at which the formal sale process was announced), either:

(a) where a public statement of the level of its possible offer has been made and the potential offeror or any person acting in concert with it acquires an interest in shares above that level; or

(b) where a third party has announced a firm intention to make an offer and the potential offeror or any person acting in concert with it acquires an interest in shares at above the level of that offer.

A Dealing Disclosure will also be required in accordance with Rule 8.1(b).

## **Rule 7.2**

### **7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS**

...

#### **NOTES ON RULE 7.2**

#### **1. Dealings prior to a concert party relationship arising**

...

(c) ...

*If such a group of persons includes a principal trader and the aggregate number of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period, the shares are acquired in a client-serving capacity and the number of shares which the principal trader holds in a client-serving capacity does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.*

## **Rule 8**

### **RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS**

...

#### **NOTES ON RULE 8**

...

#### **2. Timing of disclosure**

(a) **Disclosures by the parties to the offer**

(i) ~~Subject to the following paragraph, a~~ party to the offer must make an Opening Position Disclosure by no later than 12 noon on the day falling 10 business days after the commencement of the offer period or the announcement that first identifies an offeror (as the case may be).

~~However, if an offeror announces a firm intention to make an offer before the deadline in the previous paragraph, it must at the same time make an Opening Position Disclosure in accordance with Rule 8.1(a)(i). In such a case, it may not be practicable in the time available to have made enquiries of all persons acting in concert with the offeror in order to include all relevant details in respect of such persons in the Opening Position Disclosure. In such circumstances, this fact should be stated and a further Opening Position Disclosure, containing all relevant details, should be made as soon as possible thereafter and in any event (except with the consent of the Panel) before the deadline in the previous paragraph. The Panel should be consulted in all such cases.~~

If a party to the offer deals in any relevant securities of the offeree company or any securities exchange offeror before midnight on the day before the ~~relevant~~ deadline in the previous paragraphs above, it must make a Dealing Disclosure (in respect of the dealings and positions of itself alone) in accordance with Rule 8.1(b) or 8.2(b) (as appropriate) and with paragraph (ii) below. However, the party to the offer must also make an Opening Position Disclosure (in respect of the positions of itself and any persons acting in concert with it) by the ~~relevant~~ deadline above.

...

3. **Method of disclosure**

...

**(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 2.10.

...

5. **Details to be included in the disclosure**

- (a) **Public disclosures (other than Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity)**

...

An Opening Position Disclosure by a party to the offer must also include:

(vii) ... ~~and~~

~~(viii) details of any relevant securities in respect of which that party or any person acting in concert with it has procured an irrevocable commitment or a letter of intent (see Rule 2.11).~~

The interests, short positions, rights to subscribe, dealing arrangements, securities borrowing and lending positions and irrevocable commitments and letters of intent to be disclosed under (ii), (iii), (vi), and (vii) ~~and~~ ~~(viii)~~ above are those determined in accordance with Note 7(d) below.

Subject to the following paragraph, aAny Dealing Disclosure must also include:

~~(ix)~~viii) the total of the relevant securities in question in which the dealing took place;

~~(ix)~~ the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5(i) below);

~~(ix)~~ if the disclosure is by a person acting in concert with a party to the offer, the identity of the party to the offer concerned; and

~~(ix)~~xi) the date of the dealing.

However, a Dealing Disclosure by a connected principal trader where the sole reason for the connection is that the principal trader is controlled# by, controls or is under the same control as a connected adviser to an offeror, the offeree company or any person acting in concert with an offeror or the offeree company must include the information specified in Note 5(b) below. The Panel may, where it considers it appropriate, require the person concerned to make more detailed private disclosure to the Panel.

#See Note at end of Definitions Section.

**(b) Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity**

A Dealing Disclosure by an exempt principal trader with recognised intermediary status dealing in a client-serving capacity must include:

- (i) the identity of the person disclosing;
- (ii) the identity of the party to the offer with which the person disclosing is connected;
- (iii) total acquisitions and disposals;
- (iv) the highest and lowest prices paid and received; and
- (v) the date of the dealing.

In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5(i) below).

...

**(f) Owner or controller details**

For the purpose of disclosing identity, the owner or controller of any interest or short position in securities disclosed must be specified, in addition to any other details. The naming of nominees or vehicle companies is insufficient. If the owner or controller of the interest or short position is a trust, details of the trustee(s), the settlor and the beneficiaries of the trust must be disclosed. Where the beneficiaries are a connected group, for example, members of a family, a description of the group will normally be sufficient.

The Panel may require additional information to be disclosed when it appears to be appropriate, for example to identify other persons who have an interest in the securities in question. However, in the case of disclosures by fund managers of dealings on behalf of, or positions held for the account of, discretionary clients, the clients need not be named.

...

**7. Time for calculating a person's interests etc.**

...

(d) The interests, short positions, rights to subscribe, dealing arrangements, and securities borrowing and lending positions, ~~irrevocable commitments and letters of intent~~ to be disclosed under paragraphs (ii), (iii), (vi), and (vii) ~~and (viii)~~ of Note 5(a) on Rule 8 are those existing or outstanding at midnight on the day immediately preceding the date on which the disclosure is made (except in the case of a Dealing Disclosure made on the

same day as the dealing concerned, when the interests etc. to be disclosed are those existing or outstanding immediately following the dealing taking place).

...

## **12. Potential offerors**

(a) *If a potential offeror has been referred to in an announcement by the offeree company but has not been publicly identified as such, or if it is a participant in a formal sale process announced by the offeree company (regardless of whether it was a participant at the time of the announcement), the potential offeror and persons acting in concert with it must disclose any dealings in relevant securities of the offeree company after the time of that announcement (or, if later, after the time at which it becomes a participant in the formal sale process) in accordance with Rule 8.1(b) or Rule 8.4 respectively.*

*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](http://www.thetakeoverpanel.org.uk)).*

...

## **15. Irrevocable commitments and letters of intent**

*See Rule 2.7(c)(vi) and Rule 2.11 ~~and Note 5(a)(viii) on Rule 8.~~*

## **Rule 9**

### **9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT**

...

#### **NOTES ON RULE 9.1**

...

## **16. Aggregation of interests across a group and recognised intermediaries**

...

*If such a group of persons includes a principal trader and the aggregate number of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal*

*trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period, the shares are acquired in a client-serving capacity and the number of shares which the principal trader holds in a client-serving capacity does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.*

...

#### **NOTES ON DISPENSATIONS FROM RULE 9**

##### **1. Vote of independent shareholders on the issue of new securities (“Whitewash”)**

...

*The appropriate provisions of the Code apply to whitewash proposals. Full details of the potential number and percentage of shares in which the person or group of persons acting in concert might become interested (together with details of the different interests concerned) must be disclosed in the document published in connection with the issue of the new securities, which must also include competent independent advice on the proposals which the shareholders are being asked to approve, together with a statement that the Panel has agreed to waive any consequent obligation under this Rule to make a general offer. The resolution must be made the subject of a poll. In addition, unless the person or group of persons acting in concert has entered into an agreement with the company not to make an offer, or has made a statement in the document that it does not intend to make an offer, the document must contain a statement that the person or group will not be restricted from making an offer for the company in the event that the proposals are approved at the shareholders’ meeting. The Panel must be consulted and a proof document submitted at an early stage.*

#### **Rule 13.1**

##### **13.1 SUBJECTIVITY**

**An offer must not normally be subject to conditions or pre-conditions which depend solely on subjective judgements by ~~the directors of the offeror or of the offeree company~~ (as the case may be) or, in either case, its directors or the fulfilment of which is in their hands. ...**

#### **Rule 19.1**

##### **19.1 STANDARDS OF CARE**

...

**NOTES ON RULE 19.1**

...

**5. Quotations**

*A quotation (for example, from a newspaper or ~~a broker's~~ an investment analyst's circular) must not be used by a party to the offer out of context and details of the origin must be included.*

...

**Rule 19.3****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 2.11 is included in an announcement ~~made under Rule 2.7 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.*

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

...

**NOTES ON RULE 20.1**

...

**4. Information Circulars published by ~~concert parties~~ (eg brokers) connected advisers etc.**



~~Rule 20.1 does not prevent brokers or connected advisers to, or other persons acting in concert with, the offeree company or an offeror from any party to the offer sending circulars during the offer period to their own investment clients provided such their publication has previously 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.~~

~~In giving to their own clients material on the companies involved in an offer, persons acting in concert with any party to the offer must bear in mind the essential point that new information must not be restricted to a small group. Accordingly, such material 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 ~~should~~ must be avoided (unless, and then only to the extent that, the offer documents or the offeree board circulars themselves 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. ~~Clearance before publication may in many cases be effected by telephone but where there is doubt a draft must be sent to the Panel as early as possible. In all cases, copies of the final version of circulars must be sent to the Panel at the time of publication. Where relevant, the requirements of this Note apply to screen displays.~~~~

...

~~Attention is drawn to paragraph (5) of the definition of acting in concert, as a result of which, for example, this Note will be relevant to brokers who, although not directly involved with the offer, are presumed to be acting in concert with an offeror or the offeree company because the broker is in the same group as the financial adviser to an offeror or the offeree company.~~

...

## **Rule 21.1**

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

**During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, the board must not, without the approval of the shareholders in general meeting:**

...

- (b) (i) issue any shares or transfer or sell, or agree to transfer or sell, any shares out of treasury or effect any redemption or purchase by the company of its own shares;**

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

...

**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~~ 26.2.*

**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:**

- (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, ~~30.4~~, 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.**

**Rule 24.1****24.1 THE OFFER DOCUMENT**

...

(b) On the day of publication, the offeror must:

(i) publish the offer document on a website in accordance with Rule ~~26.1-30.4~~; and

### Rule 24.3

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

...

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

...

(xvi) a list of the documents which the offeror has published on a website in accordance with Rules ~~26.1-26.2~~ and ~~26.2-26.3~~ and the address of the website on which the documents are published; and

### Rule 24.4

#### 24.4 INTERESTS AND DEALINGS

...

~~(d) — See also Rule 37.4(b).~~

#### NOTES ON RULE 24.4

...

#### 2. *Aggregation*

...

*Acquisitions and disposals should not be netted off, the highest and lowest prices should be stated and the disclosure should distinguish between the different categories of interests in relevant securities and short positions. A full list of all dealings, together with a draft of the proposed aggregated disclosure, should be sent to the Panel, for its approval, in advance of the publication of the offer documentation and the full list of dealings should be published on a website in accordance with Rule ~~26.3-26.2~~.*

**Rule 25.1****25.1 THE OFFEREE BOARD CIRCULAR**

...

**(b) On the day of publication, the offeree company must:****(i) publish the offeree board circular on a website in accordance with Rule 26.1-30.4; and****Rule 25.4****25.4 INTERESTS AND DEALINGS**

...

**~~(d) See also Rule 37.3(c).~~****Rule 25.7****25.7 OTHER INFORMATION****The offeree board circular must contain:**

...

**(c) a list of the documents which the offeree company has published on a website in accordance with Rules 26.1-26.2 and 26.2-26.3 and the address of the website on which the documents are published; and****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 relevant document, announcement or information:****(i) any document or information in relation to an offer sent to shareholders, persons with information rights or other relevant persons in accordance with Rule 30.1; or**

**(ii) any announcement (other than an announcement referred to in Note 8 below) published via a RIS (whether related to the offer or not).**

**(b) Any such document, announcement or information must include the address of the website on which it will be published. This address must be for either the webpage on which the relevant document, announcement or information may be found or a webpage which includes a clear link to the relevant webpage.**

**26.12 DOCUMENTS TO BE PUBLISHED ON A WEBSITE  
FOLLOWING THE ANNOUNCEMENT OF AN FIRM OFFER**

~~Except with the consent of the Panel, copies of t~~**The following documents must be published on a website as soon as possible and in any event by no later than 12 noon on the business day following the announcement of a firm intention to make an offer (or, if later, the date of the relevant document) until the end of the offer (including any related competition reference period):**

...

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

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

...

**NOTES ON RULE 26**

***1. Copies of documents***

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

**1. Period for which documents etc. to be made available**

Each document, announcement or information required to be published on a website under Rule 26 must continue to be made available on a website free of charge until the end of the offer (including any related competition reference period). Documents, announcements and information published following the end of the offer period which do not relate directly to the offer will not be required to be published on the website.

**2. Website to be used for publication**

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

**3. “Read-only” format**

*Documents, announcements and information published on a website must be in a “read-only” format so that they may not be amended or altered in any way.*

**4. Shareholders, persons with information rights and other persons outside the EEA**

*See the Note on Rule 23.2 and Note 3 on Rule 30.4. 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 23.2.*

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

...

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

...

**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.*

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

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

*(a) announcements in relation to notifications made pursuant to the rules of other regulatory regimes in respect of:*

(i) transactions by directors or other persons discharging managerial responsibilities in respect of a company;

(ii) the acquisition or disposal of major shareholdings; and

(iii) disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares (including treasury shares); and

(b) announcements of the number of relevant securities in issue under Rule 2.10.

## Rule 29.5

### 29.5 OPINION AND CONSENT LETTERS

...

(c) *Valuation certificate to be published on a website*

Where a valuation of assets is given in any document published in connection with an offer, the valuation report must be published on a website in accordance with ~~Rule 26.3~~ 26.2, together with an associated report or schedule containing details of the aggregate valuation. Where the Panel is satisfied that such disclosure may be commercially disadvantageous to the company concerned, it will allow the report or schedule to appear in a summarised form. In certain cases, the Panel may require any of these documents to be reproduced in full in a document sent to shareholders and persons with information rights.

## Rule 30.4

### ~~30.4 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION REQUIRED TO BE PUBLISHED ON A WEBSITE~~

~~(a) If an offeror or offeree company, or any person on its behalf:~~

~~(i) sends a document or information in relation to an offer to shareholders, persons with information rights or other relevant persons in accordance with Rule 30.1; or~~

~~(ii) publishes an announcement (whether related to the offer or not) by sending it to a RIS,~~

~~the offeror or offeree company as relevant must, as soon as possible and in any event by no later than 12 noon on the following business day, ensure that a copy is published on a website. Copies of announcements referred to in Note 5 below do not need to be published on a website.~~

~~(b) — A copy of each document, announcement or information required to be published on a website under (a) above must continue to be made available on a website free of charge during the course of the offer (and any related competition reference period). Documents, announcements and information published following the end of the offer period which do not relate directly to the offer will not be required to be published on the website.~~

~~(c) — Any document, announcement or information published in relation to an offer by an offeror or the offeree company in the manner described in (a)(i) or (ii) above (other than the announcements referred to in Note 5 below) must contain a statement providing details of the website on which a copy will be published.~~

#### ***NOTES ON RULE 30.4***

##### ***1. — Website to be used***

*A party to an offer should normally use its own website for publishing copies of documents, announcements and information. If a party to an offer does not have its own website, or proposes to use a website maintained by a third party for this purpose, the Panel should be consulted.*

##### ***2. — “Read-only” format***

*Any document, announcement or information published on a website must be published in a “read-only” format so that it may not be amended or altered in any way.*

##### ***3. — 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 23.2.*

##### ***4. — 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.*



~~5. — Announcements not required to be published on a website~~

~~Copies of the following announcements do not need to be published on a website:~~

~~(a) — announcements in relation to notifications made pursuant to the rules of other regulatory regimes in respect of:~~

~~(i) — transactions by directors or other persons discharging managerial responsibilities in respect of a company;~~

~~(ii) — the acquisition or disposal of major shareholdings; and~~

~~(iii) — disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares (including treasury shares); and~~

~~(b) — announcements of the number of relevant securities in issue under Rule 2.10.~~

## Rule 31.5

### 31.5 NO EXTENSION STATEMENTS

(a) A “no extension statement” is a statement that an offer will not be extended beyond a specified date unless it is unconditional as to acceptances.

(b) If an offeror (or its directors, officials or advisers) makes a “no extension statement”, and that statement is not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to extend its offer beyond the stated date, except:

(i) where the right to do so in certain circumstances is specifically reserved at the time the no extension statement is made and those circumstances subsequently arise; or

(ii) in wholly exceptional circumstances.

(c) If an offeror wishes to include a reservation to a no extension statement, the Panel must be consulted.

(d) The provisions of Rule 31.4 will apply in any event.

~~If statements in relation to the duration of an offer such as “the offer will not be extended beyond a specified date unless it is unconditional as to acceptances” (“no extension statements”) are included in documents or announcements published in connection with an offer, or are made by or on behalf of an offeror, its directors, officials or advisers, and not~~

~~withdrawn immediately if incorrect, only in wholly exceptional circumstances will the offeror be allowed subsequently to extend its offer beyond the stated date except where the right to do so has been specifically reserved. The provisions of Rule 31.4 will apply in any event.~~

#### **NOTES ON RULE 31.5**

(See also Rule 31.6)

##### **1. Firm statements**

~~In general, an offeror will be bound by any firm statement as to the duration of its offer. Any statement of intention will be regarded for this purpose as a firm statement; the expression “present intention” should not be used as it may be misleading.~~

##### **21. Reservation of the right to set a no extension statements aside**

~~A no extension statement may be set aside only if the offeror specifically reserved the right at the time the statement was made to set it aside in the circumstances which subsequently arise; this applies whether or not the offer was recommended at the outset.~~

(a) A no extension statement must not be subject to a reservation to set the statement aside which depends solely on subjective judgements by the offeror or its directors or the fulfilment of which is in their hands.

(b) The first document published in connection with an offer in which mention is made of the no extension statement must contain prominent reference to ~~this~~ any reservation to set it aside (precise details of which must also be included in the document). Any subsequent mention by the offeror of the no extension statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details.

(c) Notes 3 and 4 describe examples of specific types of reservation to set a no extension statement aside. However, other types of reservation may also be made (for example, a reservation relating to the recommendation of an increased or improved offer by the board of the offeree company), provided that they comply with the requirements of this Note 1.

##### **2. Wholly exceptional circumstances**

~~If the right to set aside ~~the~~ a no extension statement has not been specifically reserved, as set out above, only in wholly exceptional circumstances will the offeror will be allowed to extend its offer only in wholly exceptional circumstances (except as required by Rule 31.4), even if a recommendation from the board of the offeree company is forthcoming.~~

### 3. **Competitive situations**

~~Subject to Note 2 above, if a competitive situation arises after a no extension statement has been made, the offeror can choose not to be bound by it and to be free to extend its offer provided that:~~

If the circumstances specified in a reservation made in accordance with Rule 31.5(b)(i) relate to a competitive situation arising and such a situation arises, an offeror which wishes to set aside its no extension statement must:

(a) ~~notice make an announcement to this effect is published~~ as soon as possible (and in any event within 4 business days after the day of the firm announcement of the competing offer) and send a notice ~~a notification is sent~~ to offeree company shareholders and persons with information rights at the earliest opportunity; and

(b) give any offeree shareholders who accepted the offer after the date of the no extension statement ~~are given~~ a right of withdrawal for a period of 8 days following the date on which the announcement is made ~~notice is published~~.

(For the purpose of this Note, a competitive situation will normally arise following a public announcement of the existence of a new offeror or potential offeror whether publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)

### 4. ~~Recommendations~~

~~Subject to Note 2 above, the offeror can choose not to be bound by a no extension statement which would otherwise prevent the offeror from making an increased or improved offer that would be recommended for acceptance by the board of the offeree company.~~

### 54. **Rule 31.9 announcements**

~~Subject to Note 2 above, if~~ An offeror may reserve the right to set aside a no increase statement in the event of the offeree company makes making an announcement of the kind referred to in Rule 31.9 after the 39th day following the publication of the initial offer document and after a only if the no extension statement has been is made after that day. If such an announcement is subsequently made by the offeree company and the offeror wishes to set aside its no increase statement, the offeror must, ~~the offeror can choose not to be bound by that statement and to be free to revise its offer if permitted by the Panel under Rule 31.9, provided that notice~~ make an announcement to this effect is published as soon as possible (and in any event within 4 business days after the date of the offeree company announcement) and send a notice ~~a notification is sent~~ to offeree company shareholders and persons with information rights at the earliest opportunity.

## Rule 31.6

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

(a) Except with the consent of the Panel, an offer (whether revised or not) may not become or be declared unconditional as to acceptances after midnight on the 60th day after the day the initial offer document was published. The Panel's consent will normally only be given ~~granted~~:

(i) ~~in a competitive situation~~ if a competing firm offer has been announced (see Note 24 below); or

(ii) if the board of the offeree company consents to an extension; or

(iii) if there is a significant delay in the decision on whether there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings (see Note 5); or

~~(iiiiv)~~ as provided for in Rule 31.9; or

(iv) if the offeror's receiving agent requests an extension for the purpose of complying with Note 7 on Rule 10; or

(vi) when withdrawal rights are introduced under Rule 13.6.

(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.

~~(bc)~~ For the purpose of the acceptance condition, the offeror may only take into account acceptances or purchases of shares in respect of which all relevant electronic instructions or documents (as required by Notes 4 and 5 on Rule 10) are received by its receiving agent before the last time for acceptance set out in the offeror's relevant document or announcement. This time must be no later than 1.00 pm on the 60th day (or any other date beyond which the offeror has stated that its offer will not be extended). In the event of an extension with the consent of the Panel in circumstances other than those set out in paragraphs (a)(i) to ~~(iiiiv)~~ above, acceptances or purchases in respect of which relevant electronic instructions or documents are received after 1.00 pm on the relevant date may only be taken into account with the agreement of the Panel, which will only be given in exceptional circumstances.

~~(ed)~~ Except with the consent of the Panel, on the 60th day (or any other date beyond which the offeror has stated that its offer will not be extended) an announcement should be made by 5.00 pm as to whether the offer is unconditional as to acceptances or has lapsed. Such

announcement should include, if possible, the details required by Rule 17.1 but in any event must include a statement as to the current position in the count. ~~(See Note 2.)~~ The requirement to make an announcement by 5.00 pm should not be reflected in the terms of the offer pursuant to Rule 24.7, but, if there is any question of a delay in the announcement, the Panel should be consulted as soon as practicable. Only in exceptional circumstances will the Panel agree to an offeror's request that this announcement may be made after 5.00 pm.

## NOTES ON RULE 31.6

### 1. Consequential changes to the offer timetable

Where the Panel consents to an extension in accordance with any of Rules 31.6(a)(i) to (iv), it will normally also grant an extension to or, if appropriate, re-set "Day 39" (see Rule 31.9), "Day 46" (see Rule 32.1(c)) and "Day 53" (see Rules 2.6(d) and (e)).

#### 1. Extension of offer under Rule 31.6(a)

~~(a) — It should be noted that the effect of Rule 31.6(a) is that, unless the offer is unconditional as to acceptances by midnight on the final closing date (or the Panel gives permission for the offer to be extended), the offer will lapse. When, however, there is a Code matter outstanding on the final closing date, it may be inappropriate for the offer to become or be declared unconditional as to acceptances or to lapse at that time. In such a case, the Panel may, in addition to the circumstances set out in Rule 31.6(a), give permission for the offer to be extended, but with no extension of the time by which all relevant electronic instructions or documents in respect of acceptances, withdrawals and purchases must be received for the purpose of the acceptance condition, as referred to in Rule 31.6(b) and Rule 34.~~

~~(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.~~

#### 2. Rule 31.6(c) announcement

~~Under Rule 31.6(c), an announcement as to whether the offer is unconditional as to acceptances or has lapsed should normally be made by 5.00 pm on the final closing date. This requirement should not be reflected in the terms of the offer pursuant to Rule 24.7, but, if there is any question of a delay in the announcement required by Rule 31.6, the Panel should be consulted as soon as practicable. Only in exceptional circumstances will the Panel agree to an offeror's request that this announcement may be made after 5.00 pm.~~

## **2. Timetable for competing firm offers**

If a competing firm offer has been announced, both offerors will normally be bound by the timetable established by the publication of the competing offer document. In addition, the Panel will extend “Day 60” in accordance with any auction procedure established by the Panel in accordance with Rule 32.5.

## **3. No extension under Rule 31.6(a)(ii) after “Day 46” of a competing firm offer**

Where competing firm offers have been made, the Panel will not normally give its consent to an extension of “Day 60” under Rule 31.6(a)(ii) unless its consent is sought before the 46th day following the publication of the competing offer document (see also Rule 32.5).

## **4. Extension of “Day 60” after “Day 46”**

The Panel will normally grant an extension to “Day 60” (with a corresponding extension to, or re-setting of, “Day 46”) of an offeror’s timetable where the board of the offeree company consents to such an extension. Therefore, provided that such consent is obtained, and subject to no unreserved “no extension” statement (see Rule 31.5) or “no increase” statement (see Rule 32.2) having been made, the offeror will normally be able to revise its offer, notwithstanding that the original “Day 46” has passed.

Where an offeror has made an offer and it has been announced that a potential offeror might make a competing offer (see Rules 2.6(d) and (e)), the Panel will normally, at the request of the first offeror and with the consent of the board of the offeree company, consent to an extension of “Day 60” (with a corresponding extension to, or re-setting of, “Day 46”) as described above. In such cases, the Panel will normally also require a corresponding extension to, or re-setting of, “Day 53”, being the date by which the potential competing offeror is required to confirm its position in accordance with Rule 2.6(d) or (e) (as applicable).

## **35. The CMA and the European Commission**

~~If there is a significant delay in the decision on whether or not there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings, In the case of an extension in accordance with Rule 31.6(a)(iii), the Panel will normally extend “Day 39” (see Rule 31.9) to the second day following the announcement of such the decision on whether there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings with consequent changes to “Day 46” (see Rule 32.1(e)) and “Day 60”.~~

## **4. — Competitive situations**

~~If a competing offer has been announced, both offerors will normally be bound by the timetable established by the publication of the competing offer~~

~~document. In addition, the Panel will extend “Day 60” in accordance with any procedure established by the Panel in accordance with Rule 32.5.~~

~~The Panel will not normally grant its consent under Rule 31.6(a)(ii) in a competitive situation unless its consent is sought before the 46th day following the publication of the competing offer document.~~

**6. Where a Code matter remains outstanding on the final closing date**

When there is a Code matter outstanding on the final closing date, it may be inappropriate for the offer to become or be declared unconditional as to acceptances or to lapse at that time. In such a case, the Panel may, in addition to the circumstances set out in Rule 31.6(a), consent to the offer being extended, but with no extension of the time by which all relevant electronic instructions or documents in respect of acceptances, withdrawals and purchases must be received for the purpose of the acceptance condition, as referred to in Rule 31.6(c) and Rule 34.1.

**Rule 31.9**

**31.9 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39**

... If an announcement of the kind referred to in this Rule is made after the 39th day, the Panel will normally be prepared to grant consent to an extension to “Day 46” (see Rule 32.1(c)), “Day 53” (see Rules 2.6(d) and (e)) and/or “Day 60” (see Rule 31.6(a)) as appropriate.

**Rule 32.1**

**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 26.1-30.4; and

...

(c) The offer must be kept open for at least 14 days following the date on which the revised offer document is published. Therefore, no revised offer document may be published in the 14 days ending on the last day the offer is able to become unconditional as to acceptances.\* (See also Rule 31.6 and the Notes on Rule 31.6.)

**NOTES ON RULE 32.1**

...

### 3. *When revision is not permissible\**

*Since an offer must remain open for acceptance for 14 days following the date on which the revised offer document is published, an offeror will generally not be able to revise its offer, and must not place itself in a position where it would be required to revise its offer, in the 14 days ending on the last day its offer is able to become unconditional as to acceptances (see also Rule 31.6 and the Notes on Rule 31.6). Nor must an offeror place itself in a position where it would be required to revise its offer if it has made a no increase statement as defined in Rule 32.2.*

...

### 5. Extension of “Day 60” after “Day 46”

The Panel will normally grant an extension to “Day 60” (with a corresponding extension to, or re-setting of, “Day 46”) of an offeror’s timetable where the board of the offeree company consents to such an extension. Therefore, provided that such consent is obtained, and subject to no unreserved “no extension” statement (see Rule 31.5) or “no increase” statement (see Rule 32.2) having been made, the offeror will normally be able to revise its offer, notwithstanding that the original “Day 46” has passed.

Where an offeror has made an offer and it has been announced that a potential offeror might make a competing offer (see Rules 2.6(d) and (e)), the Panel will normally, at the request of the first offeror and with the consent of the board of the offeree company, consent to an extension of “Day 60” (with a corresponding extension to, or re-setting of, “Day 46”) as described above. In such cases, the Panel will normally also require a corresponding extension to, or re-setting of, “Day 53”, being the date by which the potential competing offeror is required to confirm its position in accordance with Rule 2.6(d) or (e) (as applicable).

## Rule 32.2

### 32.2 NO INCREASE STATEMENTS

(a) A “no increase statement” is a statement as to the finality of an offer, including a statement that the offer will not be “increased”, “raised”, “amended”, “revised”, “improved” or “changed” and any similar expression.

(b) If an offeror (or its directors, officials or advisers) makes a “no increase statement”, and that statement is not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to amend the terms of its offer in any way, even if the amendment would not result in an



increase of the value of the offer (eg the introduction of a lower securities exchange alternative), except:

(i) where it specifically reserved the right to do so in certain circumstances at the time the no increase statement was made and those circumstances subsequently arise; or

(ii) in wholly exceptional circumstances.

(c) If an offeror wishes to include a reservation to a no increase statement, the Panel must be consulted.

~~If statements in relation to the value or type of consideration such as “the offer will not be further increased” or “our offer remains at xp per share and it will not be raised” (“no increase statements”) are included in documents or announcements published in connection with an offer, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, only in wholly exceptional circumstances will the offeror be allowed subsequently to amend the terms of its offer in any way even if the amendment would not result in an increase of the value of the offer (eg the introduction of a lower paper alternative) except where the right to do so has been specifically reserved.~~

## NOTES ON RULE 32.2

### 1. ~~Firm statements~~

~~In general, an offeror will be bound by any firm statement as to the finality of its offer. In this respect, the Panel will treat any indication of finality as absolute, unless the offeror clearly states the circumstances in which the statement will not apply, and will not distinguish between the precise words chosen, ie the offer is “final” or will not be “increased”, “amended”, “revised”, “improved”, “changed”, and similar expressions will all be treated in the same way. Any statement of intention will be regarded for this purpose as a firm statement; the expression “present intention” should not be used as it may be misleading.~~

### 21. Reservation of the right to set a no increase statements aside

~~A no increase statement may be set aside only if the offeror has specifically reserved the right at the time the statement was made to set it aside in the circumstances which subsequently arise; this applies whether or not the offer was recommended at the outset.~~

(a) A no increase statement must not be subject to a reservation to set the statement aside which depends solely on subjective judgements by the offeror or its directors or the fulfilment of which is in their hands.

(b) The first document published in connection with an offer in which mention is made of the no increase statement must contain prominent

reference to ~~this~~ any reservation to set it aside (precise details of which must also be included in the document). Any subsequent mention by the offeror of the no increase statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details.

(c) Notes 3 and 4 describe examples of specific types of reservation to set a no increase statement aside. However, other types of reservation may also be made (for example, a reservation relating to the recommendation of an increased or improved offer by the board of the offeree company), provided that they comply with the requirements of this Note 1.

## 2. Wholly exceptional circumstances

~~If the right to set aside the a no increase statement has not been specifically reserved, as set out above, only in wholly exceptional circumstances will the offeror will be allowed to increase or amend its offer only in wholly exceptional circumstances. after a no increase statement, even if a recommendation from~~ The agreement of the board of the offeree company is forthcoming or if the fact that the offer is wholly unconditional in all respects will not be regarded as wholly exceptional circumstances.

## 3. Competitive situations

~~Subject to Note 2 above, if a competitive situation arises after a no increase statement has been made, the offeror can choose not to be bound by it and to be free to revise its offer provided that:~~

If the circumstances specified in a reservation made in accordance with Rule 32.2(b)(i) relate to a competitive situation arising and such a situation arises, an offeror which wishes to set aside its no increase statement must:

(a) ~~notice make an announcement to this effect is published~~ as soon as possible (and in any event within 4 business days after the day of the firm announcement of the competing offer) and send a notice ~~a notification is sent~~ to offeree company shareholders and persons with information rights at the earliest opportunity; and

(b) give any shareholders who accepted the offer after the date of the no increase statement ~~are given a right of withdrawal for a period of 8 days following the date on which the announcement is made~~ ~~notice is published.~~ \*

(For the purpose of this Note, a competitive situation will normally arise following a public announcement of the existence of a new offeror or potential offeror whether publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)

#### 4. ~~Recommendations~~

~~Subject to Note 2 above, the offeror can choose not to be bound by a no increase statement which would otherwise prevent the offeror from making an increased or improved offer that would be recommended by the board of the offeree company.~~

#### 54. Rule 31.9 announcements†

~~Subject to Note 2 above, if~~ An offeror may reserve the right to set aside a no increase statement in the event of the offeree company makes-making an announcement of the kind referred to in Rule 31.9 after the 39th day following the publication of the initial offer document and after a only if the no increase statement has-been-is made after that day. If such an announcement is subsequently made by the offeree company and the offeror wishes to set aside its no increase statement, the offeror must, the offeror can choose not to be bound by that statement and to be free to revise its offer if permitted by the Panel under Rule 31.9, provided that notice make an announcement to this effect is published as soon as possible (and in any event within 4 business days after the date of the offeree company announcement) and send a notice a notification is sent to offeree company shareholders and persons with information rights at the earliest opportunity.

#### 65. Schemes of arrangement

A switch to or from a scheme of arrangement will not normally, of itself, be regarded as an amendment which would be precluded by an earlier no increase statement in relation to the value or type of consideration offered. Therefore, it is not necessary for an offeror making such a statement specifically to reserve the right to switch its offer structure.

### Rule 32.5

#### 32.5 COMPETITIVE SITUATIONS

**If a competitive situation continues to exist in the later stages of the offer period, the Panel will normally require revised offers to be announced in accordance with an auction procedure, the terms of which will be determined and announced by the Panel. That procedure will normally follow the auction procedure set out in Appendix 8, require final revisions to competing offers to be announced by the 46th day following the publication of the competing offer document but enable an offeror to revise its offer within a set period in response to any revision announced by a competing offeror on or after the 46th day. The procedure will not normally require any revised offer document to be sent to offeree company shareholders and persons with information rights before the expiry of a set period after the last revision to either offer is announced. However, †The Panel will consider applying any alternative procedure which is agreed between competing offerors and the board of the offeree**

**company. Under any auction procedure, the Panel may set a deadline by which any revised offer document must be sent to offeree company shareholders and persons with information rights.**

#### **NOTES ON RULE 32.5**

##### **1. Dispensation from obligation to make an offer**

*The Panel will normally grant a dispensation from the obligation to make a revised offer, which is lower than the final revised offer announced by a competing offeror, when the board of the offeree company consents.*

##### **2. ~~Guillotine~~**

*The Panel may impose a final time limit for announcing revisions to competing offers for the purpose of any procedure established in accordance with this Rule taking into account representations by the board of the offeree company, the revisions previously announced and the duration of the procedure.*

##### **32. Schemes of arrangement**

*Where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Panel as to the applicable timetable. The Panel will then determine the date or dates on which final revisions to the competing offers must be announced and on which any auction procedure will commence, taking into account all the relevant circumstances.*

#### **Rule 32.6**

##### **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 and, at the same time:

(i) publish the circular on a website in accordance with Rule ~~26.1-30.4~~ 26.1-30.4;

#### **Rule 37.3**

##### **~~37.3 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEREE COMPANY~~**

(a) ~~Shareholders' approval~~

~~During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, no redemption or purchase by the offeree company of its own shares may be effected without the approval of the shareholders at a general meeting. The notice convening the meeting must include information about the offer or anticipated offer. Where it is felt that the redemption or purchase is in pursuance of a contract entered into earlier or another pre-existing obligation, the Panel must be consulted and its consent to proceed without a shareholders' meeting obtained (Notes 1 and 9 on Rule 21.1 may be relevant).~~

~~(b) — *Public disclosure*~~

~~For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company.~~

~~(c) — *Disclosure in the offeree board circular*~~

~~Any offeree board circular published in connection with an offer must state the amount of relevant securities of the offeree company which the offeree company has redeemed or purchased during the period commencing 12 months prior to the offer period and ending with the latest practicable date prior to the publication of the document, and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.~~

## Rule 37.4

### ~~37.4 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEROR COMPANY~~

~~(a) — *Public disclosure*~~

~~For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by an offeror.~~

~~(b) — *Disclosure in the offer document*~~

~~The offer document must state (in the case of a securities exchange offer only) the number of relevant securities of the offeror which the offeror has redeemed or purchased between the start of the offer period and the latest practicable date prior to the publication of the offer document and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.~~

## Appendix 1

### 1 INTRODUCTION

...

(c) Rules 19, 20, ~~and 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.

...

### 4 WHITEWASH CIRCULAR

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

(a) competent independent advice to the board of the offeree company regarding the transaction, the controlling position which it will create and the effect which this will have on shareholders generally;

...

(d) in cases where the potential controlling position will be held by more than one person, the identity of the potential controllers and their individual potential interests in shares in addition to the information required under (ij) below;

...

(f) a statement that, in the event that the proposals are approved at the shareholders' meeting, the potential controllers will not be restricted from making an offer for the offeree company, unless the potential controllers have either:

(i) made a statement that they do not intend to make an offer (see Rule 2.8), in which case full details of the statement must be included in the circular; or

(ii) entered into an agreement with the company not to make an offer (see Note 5 on the definition of acting in concert), in which case full details of the standstill agreement must be included in the circular.

(fg) ... ;

(gh) ... ;

- (hi) ... ;
- (ij) ... ;
- (jk) ... ;
- (kl) ... ;
- (lm) ... ;
- (mn) ... ;
- (no) ... ; and
- (op) ... .

## Appendix 2

### 6 RULE 6

...

Calculation of the formula price at the time of an acquisition will only be possible if there is co-operation from the board of the offeree company. It is not acceptable for the procedure set out in the previous paragraph to be applied on the basis of estimated net asset values, eg those contained in ~~brokers'~~ investment analysts' circulars. ...

## Appendix 7

### 4 HOLDING STATEMENTS

(a) ~~If an announcement of the kind described in Rule 2.6(d) or (e) is made during an offer period involving~~ When an offeror has announced a firm intention to make an offer to be implemented by means of a scheme of arrangement and it has been announced that a potential competing offeror might make an offer (see Rules 2.6(d) and (e)), the Panel will normally require the potential offeror to clarify its position by a date in advance of no later than 5.00 pm on the seventh day prior to the date of the shareholder meetings, to be announced by the Panel.

(b) Where appropriate, however, taking into account all relevant ~~circumstances~~ factors, including:

- (i) the interests of offeree company shareholders and the desirability of clarification prior to the shareholder meetings; and
- (ii) the time which the ~~offeror or~~ potential offeror has had to consider its position,

the Panel may permit ~~clarification~~ the potential offeror to clarify its position after the date of the shareholder meetings but before the date of the court sanction hearing.

(c) The Panel will announce the deadline by which clarification is required under paragraph (a) or (b) above.

***NOTE ON SECTION 4***

***Date by which announcement required***

*For the purposes of Section 4(a), the date by which a clarifying announcement will be required to be made will normally be a date which is on or around 10 days prior to the date of the shareholder meetings.*

**Appendix 8**

*[for ease of reference, the new Appendix 8 is not shown in underlined text]*

**APPENDIX 8**

**AUCTION PROCEDURE FOR THE RESOLUTION OF  
COMPETITIVE SITUATIONS**

**DEFINITIONS AND INTERPRETATION**

**Auction Day 1**

The business day immediately following Day 46.

**Auction Day 2**

The business day immediately following Auction Day 1.

**Auction Day 3**

The business day immediately following Auction Day 2.

**Auction Day 4**

The business day immediately following Auction Day 3.

**Auction Day 5**

The business day immediately following Auction Day 4.



## **Auction procedure**

The procedure set out in Sections 2 to 4 below.

### **Day 46**

The 46th day following the publication by the second competing offeror of its offer document or, if the second competing offeror is proceeding by means of a scheme of arrangement, such date as the Panel shall determine.

### **Offer announcement**

An announcement of a revised offer by a competing offeror during the auction procedure.

### **Revised offer**

Any offer which represents an increase in the level of the consideration offered by a competing offeror (including the introduction of a new form of consideration or an alternative offer).

## **1 INTRODUCTION**

**(a) This Appendix 8 sets out the procedure normally to be followed pursuant to Rule 32.5 when a competitive situation continues to exist at 5.00 pm on Day 46 and no alternative procedure has been agreed between the competing offerors, the board of the offeree company and the Panel.**

**(b) Prior to the commencement of the auction procedure, the Panel will issue written instructions to each competing offeror and the offeree company setting out the detailed procedural requirements which the Panel considers are necessary to give effect to the auction procedure.**

**(c) This Appendix 8 assumes that there are two competing offerors. If a competitive situation involves more than two competing offerors, the Panel will modify the auction procedure as it considers appropriate.**

## **2 GENERAL**

**(a) Except with the consent of the Panel, the latest time by which either competing offeror may announce or make a revised offer, other than in accordance with the auction procedure, is 5.00 pm on Day 46.**

**(b) If a competitive situation continues to exist at 5.00 pm on Day 46, a competing offeror may announce a revised offer thereafter only in accordance with the auction procedure.**

**(c) If, after 5.00 pm on Day 46, a person other than the then competing offerors announces a firm intention to make an offer for the**

offeree company, the auction procedure will end and the Panel must be consulted as to the applicable timetable.

(d) A competing offeror which is permitted to announce a revised offer on any day during the auction procedure may make only one offer announcement on the relevant day.

(e) Any offer announcement must comply with the provisions of Rule 2.7.

(f) A competing offeror must not announce a revised offer the consideration of which is calculated by reference to a formula that is determinable by reference to the value of a revised offer by the other competing offeror.

(g) If a competing offeror announces a revised offer which the Panel determines to be contrary to the provisions of the auction procedure, the Panel may declare the revised offer to be invalid, and the competing offeror concerned shall not be permitted to proceed with an offer on the terms set out in the announcement.

(h) Except with the consent of the Panel, during the auction procedure, the competing offerors, the offeree company and any person acting in concert with any of them must not:

(i) make any public statement which could reasonably be expected to affect the orderly operation of the auction procedure; or

(ii) deal in relevant securities of the offeree company or take any steps to procure an irrevocable commitment or letter of intent in relation to either competing offeror's offer or to amend, vary, update or replace any irrevocable commitment or letter of intent previously procured.

(i) Following the end of the auction procedure at 5.00 pm on any of Auction Days 1 to 5, the Panel will make an announcement confirming that the auction procedure has ended.

(j) Between the end of the auction procedure and the end of the offer period, a competing offeror and any person acting in concert with it must not place itself in a position where it would be required to revise its offer. See also Notes 3 and 4 on Rule 32.1.

### **3 AUCTION DAYS 1 TO 4**

(a) The auction procedure will commence on Auction Day 1. Either or both of the competing offerors may announce a revised offer on Auction Day 1. If neither competing offeror announces a revised offer on Auction Day 1, the auction procedure will end at 5.00 pm on Auction Day 1.

**(b) A competing offeror may announce a revised offer on Auction Day 2 provided that the other competing offeror announced a revised offer on Auction Day 1. If no such revised offer is announced on Auction Day 2, the auction procedure will end at 5.00 pm on Auction Day 2.**

**(c) A competing offeror may announce a revised offer on Auction Day 3 provided that the other competing offeror announced a revised offer on Auction Day 2. If no such revised offer is announced on Auction Day 3, the auction procedure will end at 5.00 pm on Auction Day 3.**

**(d) A competing offeror may announce a revised offer on Auction Day 4 provided that the other competing offeror announced a revised offer on Auction Day 3. If no such revised offer is announced on Auction Day 4, the auction procedure will end at 5.00 pm on Auction Day 4.**

**(e) If a competing offeror is permitted to announce a revised offer on any of Auction Days 1 to 4 and wishes to do so, that competing offeror must submit an offer announcement to the Panel before 4.00 pm on the relevant day.**

**(f) Unless the Panel otherwise consents or directs, if the relevant competing offeror submits an offer announcement to the Panel in accordance with paragraph (e), that competing offeror must announce the revised offer by submitting that offer announcement, in the same form as the announcement submitted to the Panel, to a RIS before 5.00 pm on the relevant day, embargoed for publication until that time.**

**(g) If the relevant competing offeror does not submit an offer announcement to the Panel in accordance with paragraph (e) on any of Auction Days 1 to 4, that competing offeror may not then announce a revised offer on that day.**

#### **4 AUCTION DAY 5**

**(a) If a competing offeror which is permitted to announce a revised offer on Auction Day 4 does so, either or both of the competing offerors may announce a revised offer on Auction Day 5. In any event, the auction procedure will then end at 5.00 pm on Auction Day 5.**

**(b) If either competing offeror wishes to announce a revised offer on Auction Day 5, that competing offeror must submit an offer announcement to the Panel before 4.00 pm on that day. The offer announcement may be submitted subject to a condition that the revised offer will be announced only if the other competing offeror also submits an offer announcement to the Panel before 4.00 pm on that day (but not subject to any other conditions, such as the level of a competing offeror's revised offer). If an offer announcement is submitted to the Panel subject to such a condition, the Panel will, before 4.30 pm on Auction Day 5, notify the relevant competing offeror whether the condition has been**

**satisfied. If both competing offerors submit an offer announcement subject to a condition as referred to in this paragraph (b), both conditions will be deemed to have been satisfied.**

**(c) Unless the Panel otherwise consents or directs, if a competing offeror submits an offer announcement to the Panel on Auction Day 5 in accordance with paragraph (b) and either:**

**(i) the offer announcement is not subject to a condition as referred to in paragraph (b); or**

**(ii) the offer announcement is subject to a condition as referred to in paragraph (b) and the Panel notifies that competing offeror that the condition has been satisfied,**

**that competing offeror must announce the revised offer by submitting that offer announcement, in the same form as the announcement submitted to the Panel, to a RIS before 5.00 pm on that day, embargoed for publication until that time.**