

# *The Takeover Code*

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ISBN 0 9500466 6 3

PFBPH

Typeset and printed by RR Donnelley.

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## **PUBLICATION DATES**

First edition in loose-leaf format	19 April 1985
Second edition	26 January 1988
Third edition	25 October 1990
Fourth edition	8 July 1993
Fifth edition	16 December 1996
Sixth edition	12 July 2000
Seventh edition	1 May 2002
Eighth edition	20 May 2006
Ninth edition	30 March 2009
Tenth edition	19 September 2011
Eleventh edition	20 May 2013

(From time to time amendments are issued.)

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# THE CITY CODE ON TAKEOVERS AND MERGERS

## INTRODUCTION

### 1 OVERVIEW

The Panel on Takeovers and Mergers (the “Panel”) is an independent body, established in 1968, whose main functions are to issue and administer the City Code on Takeovers and Mergers (the “Code”) and to supervise and regulate takeovers and other matters to which the Code applies in accordance with the rules set out in the Code. It has been designated as the supervisory authority to carry out certain regulatory functions in relation to takeovers pursuant to the Directive on Takeover Bids (2004/25/EC) (the “Directive”). Its statutory functions are set out in and under Chapter 1 of Part 28 of the Companies Act 2006 (as amended by The Companies Act 2006 (Amendment of Schedule 2) (No 2) Order 2009) (the “Act”). Rules are set out in the Code (including this Introduction, the General Principles, the Definitions and the Rules (and the related Notes and Appendices)) and the Rules of Procedure of the Hearings Committee. These rules may be changed from time to time, and rules may also be set out in other documents as specified by the Panel. Statutory rules also apply to the Isle of Man, Jersey and Guernsey: see sections 14, 15 and 16 for more details.

Further information relating to the Panel and the Code can be found on the Panel’s website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk). The Code is also available on the Panel’s website.

### 2 THE CODE

Save for sections 2(c) and (d) (which each set out a rule), this section gives an overview of the nature and purpose of the Code.

#### (a) Nature and purpose of the Code

The Code is designed principally to ensure that shareholders in an offeree company are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders in the offeree company of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the offeree company and its shareholders. In addition, it is not the purpose of the Code either to facilitate or to impede takeovers. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government and other bodies.

**INTRODUCTION CONTINUED**

The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to offeree company shareholders and an orderly framework for takeovers can be achieved. Following the implementation of the Directive by means of the Act, the rules set out in the Code have a statutory basis in relation to the United Kingdom and comply with the relevant requirements of the Directive. The rules set out in the Code also have a statutory basis in relation to the Isle of Man, Jersey and Guernsey: see sections 14, 15 and 16 respectively.

**(b) General Principles and Rules**

The Code is based upon a number of General Principles, which are essentially statements of standards of commercial behaviour. These General Principles are the same as the general principles set out in Article 3 of the Directive. They apply to takeovers and other matters to which the Code applies. They are expressed in broad general terms and the Code does not define the precise extent of, or the limitations on, their application. They are applied in accordance with their spirit in order to achieve their underlying purpose.

In addition to the General Principles, the Code contains a series of rules. Although most of the rules are expressed in less general terms than the General Principles, they are not framed in technical language and, like the General Principles, are to be interpreted to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter.

**(c) Derogations and Waivers**

The Panel may derogate or grant a waiver to a person from the application of a rule (provided, in the case of a transaction and rule subject to the requirements of the Directive, that the General Principles are respected) either:

- (i) in the circumstances set out in the rule; or
- (ii) in other circumstances where the Panel considers that the particular rule would operate unduly harshly or in an unnecessarily restrictive or burdensome or otherwise inappropriate manner (in which case a reasoned decision will be given).

**(d) Transitional provisions for offers which are not takeover bids under the Directive**

In relation to any offer which is not a “takeover bid” within the meaning given in the Directive, anything done (or not done) with respect to a rule set out in the Code as in force before 6 April 2007 shall have effect from 6 April 2007 as done (or not done) with respect to that rule of the Code as in force from 6 April 2007 and any reference in the Code to a rule of the Code shall be construed as including a reference to that rule as in force before 6 April 2007. These transitional provisions do not apply to the Channel Islands or the Isle of Man.

## INTRODUCTION CONTINUED

### 3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

This section (except for sections 3(d) and (e)) sets out the rules as to the companies, transactions and persons to which the Code applies.

#### (a) Companies

(i) UK, Channel Islands and Isle of Man registered and traded companies

The Code applies to all offers (not falling within paragraph (iii) below) for companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices\* in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market or a multilateral trading facility in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man.

(ii) Other companies

The Code also applies to all offers (not falling within paragraph (i) above or paragraph (iii) below) for public and private companies† and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices\* in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:

- (A) any of their securities have been admitted to trading on a regulated market or a multilateral trading facility in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man at any time during the 10 years prior to the relevant date; or
- (B) dealings and/or prices at which persons were willing to deal in any of their securities have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date, whether via a newspaper, electronic price quotation system or otherwise; or
- (C) any of their securities have been subject to a marketing arrangement as described in section 693(3)(b) of the Act at any time during the 10 years prior to the relevant date; or
- (D) they have filed a prospectus for the offer, admission to trading or issue of securities with the registrar of companies or any other relevant authority in the United Kingdom, the Channel Islands or the Isle of Man (but in the case of any other such authority only if the filing is on a public record) at any time during the 10 years prior to the relevant date.

*\*In the case of a UK unregistered company, the reference to “registered office” shall be read as a reference to the company’s principal office in the UK.*

*†With respect to either a company having its registered office in the Isle of Man and which is incorporated there under the Companies Act 2006 (an Act of Tynwald), or a company having its registered office in Guernsey, the company will be treated as being subject to the Code only when any of the criteria in (A) to (D) of paragraph (ii) apply.*

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In each case, the relevant date is the date on which an announcement is made of a proposed or possible offer for the company or the date on which some other event occurs in relation to the company which has significance under the Code.

The Panel appreciates that the provisions of the Code may not be appropriate to all statutory and chartered companies referred to in paragraphs (i) and (ii) above or to all private companies falling within the categories listed in paragraph (ii) above and may accordingly apply the Code with a degree of flexibility in suitable cases.

- (iii) Shared jurisdiction — UK and other EEA registered and traded companies

The Code also applies (to the extent described below) to offers for the following companies:

- (A) a company which has its registered office\* in the United Kingdom whose securities are admitted to trading on a regulated market in one or more member states of the European Economic Area but not on a regulated market in the United Kingdom;
- (B) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading on a regulated market in the United Kingdom and not on a regulated market in any other member state of the European Economic Area; and
- (C) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading on regulated markets in more than one member state of the European Economic Area including the United Kingdom, but not on a regulated market in the member state of the European Economic Area in which it has its registered office, if:
  - (I) the securities of the company were first admitted to trading only in the United Kingdom; or
  - (II) the securities of the company are simultaneously admitted to trading on more than one regulated market on or after 20 May 2006, if the company notifies the Panel and the relevant regulatory authorities on the first day of trading that it has chosen the Panel to regulate it; or
  - (III) the Panel is the supervisory authority pursuant to the second paragraph of Article 4(2)(c) of the Directive.

A company referred to in paragraphs (C)(II) or (III) must notify a Regulatory Information Service of the selection of the Panel to regulate it without delay.

*\*In the case of a UK unregistered company, the reference to “registered office” shall be read as a reference to the company’s principal office in the UK.*

## INTRODUCTION CONTINUED

The provisions of the Code which will apply to such offers shall be determined by the Panel on the basis set out in Article 4(2)(e) of the Directive. In summary, this means that:

- in cases falling within paragraph (A) above, the Code will apply in respect of matters relating to the information to be provided to the employees of the offeree company and matters relating to company law (in particular the percentage of voting rights which confers control and any derogation from the obligation to launch an offer, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of an offer) (“employee information and company law matters”); in relation to matters relating to the consideration offered (in particular the price) and matters relating to the offer procedure (in particular the information on the offeror’s decision to make an offer, the contents of the offer document and the disclosure of the offer) (“consideration and procedural matters”), the rules of the supervisory authority of the member state determined in accordance with Article 4(2)(b) and (c) of the Directive as the relevant supervisory authority will apply; and
- in cases falling within paragraphs (B) or (C) above, the Code will apply in respect of consideration and procedural matters; in relation to employee information and company law matters, the rules of the supervisory authority in the member state where the offeree company has its registered office will apply.

### (iv) Open-ended investment companies

The Code does not apply to offers for open-ended investment companies as defined in Article 1(2) of the Directive.

### (b) Transactions

In cases falling within paragraphs (a)(i) or (ii) above, the Code is concerned with regulating takeover bids and merger transactions of the relevant companies, however effected, including by means of statutory merger or scheme of arrangement (as defined in the Definitions Section). The Code is also concerned with regulating other transactions (including offers by a parent company for shares in its subsidiary, dual holding company transactions, new share issues, share capital reorganisations and offers to minority shareholders) which have as their objective or potential effect (directly or indirectly) obtaining or consolidating control of the relevant companies, as well as partial offers (including tender offers pursuant to Appendix 5) to shareholders for securities in the relevant companies. The Code also applies to unitisation proposals which are in competition with another transaction to which the Code applies.

In cases falling within paragraph (a)(iii) above, “offers” means only any public offer (other than by the company itself) made to the holders of the company’s

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securities to acquire those securities (whether mandatory or voluntary) which follows or has as its objective the acquisition of control of the company concerned.

The Code applies to all the above transactions at whatever stage of their implementation, including possible transactions which have not yet been announced.

References in the Code to “takeovers” and “offers” include all transactions subject to the Code as referred to in this section.

The Code does not apply to offers for non-voting, non-equity capital unless they are offers required by Rule 15.

**(c) Related matters**

In addition to regulating the transactions referred to in section 3(b) above, the Code also contains rules for the regulation of things done in consequence of, or otherwise in relation to, takeovers and about cases where any such takeover is, or has been, contemplated or apprehended or an announcement is made denying that any such takeover is intended.

**(d) Dual jurisdiction**

Takeovers and other matters to which the Code applies may from time to time be subject to the dual jurisdiction of the Panel and an overseas takeover regulator, including offers for those companies within paragraph (a)(iii) above. In such cases, early consultation with the Panel is advised so that guidance can be given on how any conflicts between the relevant rules may be resolved and, where relevant, which provisions of the Code apply pursuant to Article 4(2)(e) of the Directive.

**(e) Re-registration of a public company as a private company**

A public company incorporated in the United Kingdom, the Channel Islands or the Isle of Man may decide to re-register as a private company as a result of which, pursuant to section 3(a) above, the Code may no longer apply to it. If the Code would no longer apply in such circumstances and the relevant company has more than one shareholder, early consultation with the Panel is advised before it re-registers as a private company so that guidance can be given by the Panel on the appropriate disclosure to be made to its shareholders about the implications of the loss of Code protection.

**(f) Code responsibilities and obligations**

The Code applies to a range of persons who participate in, or are connected with, or who in any way seek to influence, intervene in, or benefit from, takeovers or other matters to which the Code applies.

## **INTRODUCTION CONTINUED**

The Code also applies to all advisers to such persons, and all advisers in so far as they advise on takeovers or other matters to which the Code applies. Financial advisers to whom the Code applies have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and will comply with them and that the Panel is consulted whenever appropriate.

The Code also applies to any directors, employees or representatives through whom any body corporate, partnership or other entity to which the Code applies acts. The Panel expects all bodies corporate, partnerships and other entities to which the Code applies to ensure that their relevant directors and employees receive appropriate and timely guidance in respect of the Code and will hold any such entity responsible for its directors' and employees' acts or omissions.

The Code imposes limitations on the manner in which directors can act in connection with takeovers, which may impinge on the duties that the directors of offeror and offeree companies might owe.

The Code applies in respect of the acts and omissions of any person in connection with a takeover or any other matter to which the Code applies, notwithstanding that the offeree company may since have ceased to be subject to the Code.

In this section 3(f), references to "directors" means, in relation to any body corporate, its directors and officers, in relation to any partnership, its partners, and, in relation to any other entity, those persons exercising equivalent functions on behalf of the entity concerned.

In cases of doubt, the Panel must be consulted as to the persons to whom the Code applies.

## **4 THE PANEL AND ITS COMMITTEES**

Save for section 4(d) (which sets out a rule), this section gives an overview of the membership, functions, responsibilities and general activities of the Panel and certain of its Committees.

Details of various other Committees of the Panel are available on the Panel's website.

### **(a) The Panel**

The Panel assumes overall responsibility for the policy, financing and administration of the Panel's functions and for the functioning and operation of the Code. The Panel operates through a number of Committees and is directly responsible for those matters which are not dealt with through one of its Committees.

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The Panel comprises up to 35 members:

- (i) the Chairman, who is appointed by the Panel;
- (ii) up to three Deputy Chairmen, who are appointed by the Panel;
- (iii) up to twenty other members, who are appointed by the Panel; and
- (iv) individuals appointed by each of the following bodies:

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

The Association of British Insurers

The Association of Investment Companies

The British Bankers' Association

The Confederation of British Industry

The Institute of Chartered Accountants in England and Wales

The Investment Association

The National Association of Pension Funds

The Wealth Management Association.

The Chairman and the Deputy Chairmen are designated as members of the Hearings Committee. Each other Panel member appointed by the Panel under paragraph (iii) above is designated upon appointment to act as a member of either the Panel's Code Committee or its Hearings Committee.

Up to twelve Panel members appointed by the Panel under paragraph (iii) above are designated as members of the Code Committee. The Panel may appoint designated alternates for such members of the Code Committee. One designated alternate may act as a member of the Panel (or the Code Committee) in a relevant member's place when he is unavailable.

Up to eight Panel members appointed by the Panel under paragraph (iii) above are designated as members of the Hearings Committee. The Panel may appoint designated alternates for such members of the Hearings Committee. One designated alternate may act as a member of the Panel (or the Hearings Committee) in a relevant member's place when he is unavailable.

The Panel members appointed by the bodies under paragraph (iv) above become members of the Panel's Hearings Committee without further designation by the Panel. Each of these bodies may appoint designated alternates for its appointees. One designated alternate may act as a member of the Panel (or the Hearings Committee) in the relevant member's place when he is unavailable. In performing their functions on the Hearings Committee, these members (and their alternates) act independently of the body which has appointed them (and not as that body's agent or delegate) and exercise their own judgment as to how to perform their functions and how to vote.

## **INTRODUCTION CONTINUED**

Details of the Panel and its Committees, and the names of members of the Panel and the designated alternates, are available on the Panel's website.

### **(b) The Code Committee**

The Code Committee represents a spread of shareholder, corporate, practitioner and other interests within the Panel's regulated community. Up to twelve members of the Panel are designated by the Panel as members of the Code Committee. Its membership from time to time and Terms of Reference are available on the Panel's website.

The Code Committee carries out the rule-making functions of the Panel and is solely responsible for keeping the Code (other than those matters set out in sections 1, 2(a) and (b), 4(a), (b) and (c), 5, 7, 8, 13, 14, 15 and 16 of the Introduction, which are the responsibility of the Panel) under review and for proposing, consulting on, making and issuing amendments to those parts of the Code. The Code Committee's consultation procedures are set out in its Terms of Reference. Amendments to those matters set out in sections 1, 2(a) and (b), 4(a), (b) and (c), 5, 7, 13, 14, 15 and 16 of the Introduction will usually be issued by the Panel. Amendments to those matters set out in section 8 of the Introduction will be agreed by the Takeover Appeal Board and will be issued by the Panel with immediate effect.

Matters leading to possible amendment to the Code might arise from a number of sources, including specific cases which the Panel has considered, market developments or particular concerns of those operating within the markets.

Once it has agreed that a particular matter is to be pursued, the Code Committee will prepare and publish a Public Consultation Paper ("PCP") seeking the views of interested parties on the proposals and setting out the background to, reasons for and (where available) full text of the proposed amendment. Consultation periods in relation to PCPs vary depending on the complexity of the subject, but will usually be between one and two months.

Following the end of the consultation period, the Code Committee will publish its conclusions on the proposed amendment, taking account of the responses to the PCP received, together with the final Code amendments in a Response Statement ("RS"). It is the Code Committee's policy to make copies of all non-confidential responses it receives to a PCP available on request.

In certain exceptional cases, the Code Committee might consider it necessary to amend the Code on an expedited basis, for example because a particular market development appears to the Code Committee to require that the proposed amendment be made more quickly than the usual public consultation process would permit. In such cases, the Code Committee will publish the amendment with immediate effect and without prior formal consultation, followed in due course by a PCP seeking views on

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the amendment, which might be later modified, or removed altogether, depending on the Code Committee's conclusions following the consultation process.

Where, in the opinion of the Code Committee, any proposed amendment to the Code either does not materially alter the effect of the provision in question or is a consequence of changes to relevant legislation or regulatory requirements, the Code Committee may publish the text of the amendment without any formal consultation process.

PCPs and RSs are available on the Panel's website.

**(c) The Hearings Committee**

The Hearings Committee of the Panel comprises the Chairman, up to three Deputy Chairmen, up to eight other members designated by the Panel and the individuals appointed by the bodies listed at paragraph (a)(iv) above. Its membership from time to time, Terms of Reference and Rules of Procedure are available on the Panel's website.

The principal function of the Hearings Committee is to review rulings of the Executive. The Hearings Committee also hears disciplinary proceedings instituted by the Executive when the Executive considers that there has been a breach of the Code (see section 11 below). The Hearings Committee may also be convened for hearings in certain other circumstances. The operations of the Hearings Committee are described in more detail in section 7 below.

The Hearings Committee is assisted in its proceedings by a secretary to the Hearings Committee, usually a partner in a law firm, acting as an officer of the Panel.

**(d) Membership and representation restrictions**

No person who is or has been a member (or an alternate of a member) of the Code Committee may simultaneously or subsequently be a member (or an alternate of a member) of the Hearings Committee or the Takeover Appeal Board.

When acting in relation to any proceedings before the Hearings Committee or the Takeover Appeal Board, the Panel shall do so only by an officer or member of staff (or a person acting as such).

**5 THE EXECUTIVE**

This section gives an overview of the functions, responsibilities and general activities of the Executive.

The day-to-day work of takeover supervision and regulation is carried out by the Executive. In carrying out these functions, the Executive operates independently of the Panel. This includes, either on its own initiative or at the instigation of third parties, the conduct of investigations, the monitoring of

## **INTRODUCTION CONTINUED**

relevant dealings in connection with the Code and the giving of rulings on the interpretation, application or effect of the Code. The Executive is available both for consultation and also the giving of rulings on the interpretation, application or effect of the Code before, during and, where appropriate, after takeovers or other relevant transactions.

The Executive is staffed by a mixture of employees and secondees from law firms, accountancy firms, corporate brokers, investment banks and other organisations. It is headed by the Director General, usually an investment banker on secondment, who is an officer of the Panel. The Director General is assisted by Deputy Directors General, Assistant Directors General and Secretaries, each of whom is an officer of the Panel, and the various members of the Executive's permanent and seconded staff. In performing their functions, the secondees act independently of the body which has seconded them (and not as that body's agent or delegate). Further information about the membership of the Executive is available on the Panel's website.

## **6 INTERPRETING THE CODE**

This section sets out the rules according to which the Executive issues guidance and rulings on the interpretation, application or effect of the Code.

The Executive gives guidance on the interpretation, application and effect of the Code. In addition, it gives rulings on points of interpretation, application or effect of the Code which are based on the particular facts of a case. References to "rulings" shall include any decision, direction, determination, order or other instruction made by or under rules.

### **(a) Interpreting the Code — guidance**

The Executive may be approached for general guidance on the interpretation or effect of the Code and how it is usually applied in practice. It may also be approached for guidance in relation to a specific issue on a "no names" basis, where the person seeking the guidance does not disclose to the Executive the names of the companies concerned. In either case, the guidance given by the Executive is not binding, and parties or their advisers cannot rely on such guidance as a basis for taking any action without first obtaining a ruling of the Executive on a named basis.

In addition, the Executive may from time to time publish Practice Statements which provide informal guidance as to how the Executive usually interprets and applies particular provisions of the Code in certain circumstances. Practice Statements do not form part of the Code and, accordingly, are not binding and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. Practice Statements are available on the Panel's website.

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Panel Statements (see section 7(c) below), statements of the Takeover Appeal Board (see section 8(b) below) and publications of the Code Committee may also contain guidance on the interpretation, application or effect of the Code.

**(b) Interpreting the Code – rulings of the Executive and the requirement for consultation**

When a person or its advisers are in any doubt whatsoever as to whether a proposed course of conduct is in accordance with the General Principles or the rules, or whenever a waiver or derogation from the application of the provisions of the Code is sought, that person or its advisers must consult the Executive in advance. In this way, they can obtain a conditional ruling (on an ex parte basis) or an unconditional ruling as to the basis on which they can properly proceed and thus minimise the risk of taking action which might, in the event, be a breach of the Code. To take legal or other professional advice on the interpretation, application or effect of the Code is not an appropriate alternative to obtaining a ruling from the Executive.

In addition to giving rulings at the request of a party, the Executive may, on its own initiative, give rulings on the interpretation, application or effect of the Code where it considers it necessary or appropriate to do so.

The nature of the Executive's rulings will depend on whether or not the Executive is able to hear the views of other parties involved. If the Executive is not able to hear the views of other parties involved, it may give a conditional ruling (on an ex parte basis), which may be varied or set aside when any views of the other parties have been heard; if the Executive is able to hear the views of other parties involved, it may give an unconditional ruling. An unconditional ruling is binding on those who are made aware of it unless and until overturned by the Hearings Committee or the Takeover Appeal Board. In addition, such persons must comply with any conditional ruling given by the Executive for the purpose of preserving the status quo pending the unconditional ruling.

Rulings of the Executive, including any grant or refusal to grant a waiver or derogation from the application of any rules, may be referred to the Hearings Committee for review as set out in section 7 below.

**7 HEARINGS COMMITTEE**

This section gives an overview of the procedural rules which apply to the commencement of proceedings before the Hearings Committee and the procedures followed by the Hearings Committee in connection with hearings before it. The full Rules of Procedure of the Hearings Committee are available on the Panel's website.

**INTRODUCTION CONTINUED****(a) Hearings before the Hearings Committee**

The Hearings Committee can be convened in the following circumstances:

- (i) if a party to a takeover or any other person affected by a ruling of the Executive and with a sufficient interest in the matter, wishes to contest a ruling of the Executive, that party or person is entitled to request that the matter be reviewed by the Hearings Committee; or
- (ii) the Executive may refer a matter for review by the Hearings Committee without itself giving a ruling where it considers that there is a particularly unusual, important or difficult point at issue; or
- (iii) the Executive may institute disciplinary proceedings before the Hearings Committee when it considers that there has been a breach of the Code or of a ruling of the Executive or the Panel; or
- (iv) in other circumstances where the Executive or the Hearings Committee considers it appropriate to do so.

The Hearings Committee can be convened at short notice, where appropriate.

**(b) Time limits for applications for review by the Hearings Committee; applications with no reasonable prospect of success**

Where a party to a takeover or any other person affected by a ruling of the Executive and with sufficient interest in the matter wishes a matter to be reviewed by the Hearings Committee, the Panel must be notified as soon as possible and, in any event (subject to the following paragraph), within such period as is reasonable in all the circumstances of the case (which shall not be longer than one month from the event giving rise to the application for review).

Where it considers necessary, the Executive may stipulate a reasonable time within which the Panel must be notified. Such time may, depending on the facts of the case, range from a few hours to the one month period referred to above. The Executive may also extend the usual one month period within which the Panel must be notified.

The Chairman (or, failing that, the chairman of the hearing as specified below) may, on behalf of the Hearings Committee, deal with applications for procedural directions, and may reject requests that the Hearings Committee be convened on any matter which he considers has no reasonable prospect of success, without convening the Hearings Committee and without holding a hearing.

**INTRODUCTION CONTINUED****(c) Conduct of hearings before the Hearings Committee**

The quorum for Hearings Committee proceedings is five. The Chairman or, where he is unavailable, one of the Deputy Chairmen will usually preside as chairman of the proceedings in question (“chairman of the hearing”), although if the Chairman and all of the Deputy Chairmen are unavailable, another member of the Hearings Committee will be appointed by the Chairman (or, failing that, by the other members of the Hearings Committee) to act as chairman of the hearing.

The Hearings Committee usually conducts its hearings using the procedure set out in its Rules of Procedure, but it (or the chairman of the hearing) may vary such procedure in such manner as it (or he) considers appropriate for the fair and just conduct and determination of the case.

At hearings before the Hearings Committee, the case is usually presented in person by the parties, which include the Executive, or their advisers. Although not usual, parties may, if they so wish, be represented by legal advisers. Usually, the parties are required to set out their case briefly in writing beforehand. The parties are permitted to call such witnesses as they consider necessary, with the consent of the chairman of the hearing.

Proceedings before the Hearings Committee are usually in private, although the chairman of the hearing may, at his discretion, direct otherwise. Parties may request that the hearing be held in public. Any such request is considered and ruled upon by the chairman of the hearing (or, at the discretion of the chairman, by the Hearings Committee itself). In the event of a public hearing, the Hearings Committee or the chairman of the hearing may direct that the Hearings Committee should hear part or parts of the proceedings in private and may impose such other conditions relating to the non-disclosure of information relating to the proceedings as it or he considers necessary and appropriate.

In general, all parties are entitled to be present throughout the hearing and to see all papers submitted to the Hearings Committee. Occasionally, however, a party may wish to present evidence to the Hearings Committee which is of a confidential or commercially sensitive nature. In such exceptional cases, the Hearings Committee or the chairman of the hearing may, if satisfied that such course is justified, direct that the evidence in question be heard in the absence of some, or all, of the other parties involved.

The parties must at the earliest opportunity raise with the chairman of the hearing issues concerning possible conflicts of interest for members of the Hearings Committee and any other objections in relation to the proceedings. Any such issues will be resolved by a ruling of the chairman of the hearing.

Proceedings before the Hearings Committee are informal. There are no rules of evidence. A recording is taken for the Hearings Committee’s own

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administrative purposes, but will not be retained once the proceedings are at an end. In addition, a transcript of the hearing is usually made. A party to the hearing may request a copy of the transcript, which may be provided subject to conditions, including conditions as to its confidentiality and use.

The Hearings Committee provides a copy of its ruling to the parties in writing as soon as practicable following the hearing. As part of the ruling, the Hearings Committee may give directions regarding the effects of the Executive's ruling (if any) and/or its ruling pending the outcome of an appeal (if any).

It is the usual policy of the Hearings Committee to publish its rulings by means of a Panel Statement issued as promptly as possible, having regard to all the circumstances of the case, after the ruling has been provided in writing to the parties. In certain circumstances, the Hearings Committee may issue a Panel Statement of its ruling (without providing supporting reasons) in advance of the publication of its full ruling. The chairman of the hearing may, upon application by any party, redact matters from any Panel Statement in order to protect confidential or commercially sensitive information.

If there is, or may be, an appeal to the Takeover Appeal Board against a ruling of the Hearings Committee (see section 8 below), the Hearings Committee (or the chairman of the hearing) may suspend publication of any Panel Statement, although an interim announcement may be made in these circumstances where appropriate. If there is an appeal, publication may, at the discretion of the chairman of the hearing, be suspended until after the decision of the Takeover Appeal Board or, in particular if the appeal is upheld, withheld altogether.

Panel Statements are available on the Panel's website.

Rulings of the Hearings Committee are binding on the parties to the proceedings and on those invited to participate in those proceedings, unless and until overturned by the Takeover Appeal Board.

### **(d) Procedural rulings**

The chairman of the hearing may give such procedural rulings as he considers appropriate for the conduct and determination of the case. This includes, for the avoidance of doubt, the ability to extend or shorten any specified time limits.

### **(e) Right of appeal**

Any party to the hearing before the Hearings Committee (or any person denied permission to be a party to the hearing before the Hearings Committee) may appeal to the Takeover Appeal Board against any ruling of

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the Hearings Committee or the chairman of the hearing (including in respect of procedural directions).

Notice of appeal, including a summary of the grounds of appeal and the remedy requested, must be given within such time as is stipulated by the Hearings Committee or the chairman of the hearing (or, at the discretion of the chairman, by the Hearings Committee itself) or, in the absence of such stipulation, within two business days of the receipt in writing of the ruling of the Hearings Committee or the chairman of the hearing in question.

**8 TAKEOVER APPEAL BOARD**

This section gives an overview of the Takeover Appeal Board (the “Board”) and the procedures followed by the Board in connection with hearings before it. The full procedures of the Board are set out in its Rules, a copy of which is available on the Board’s website at [www.thetakeoverappealboard.org.uk](http://www.thetakeoverappealboard.org.uk).

**(a) Status, purpose and membership of the Board**

The Board is an independent body which hears appeals against rulings of the Hearings Committee. The Board’s procedures are described in greater detail below.

The Chairman and Deputy Chairman of the Board will usually have held high judicial office, and are appointed by the Master of the Rolls. Other members, who will usually have relevant knowledge and experience of takeovers and the Code, are appointed by the Chairman (or, failing that, the Deputy Chairman) of the Board. The names of the members of the Board are available on the Board’s website.

The Board is assisted in its proceedings by a secretary to the Board (who will not be the person who acted as secretary to the Hearings Committee in the same matter), usually a partner in a law firm.

**(b) Conduct of hearings before the Board**

The quorum for Board proceedings is three. However, the Board hearing an appeal will usually comprise at least five members. The Chairman or, where he is unavailable, the Deputy Chairman will usually preside as chairman of the proceedings in question (“chairman of the hearing”), although if they are unavailable, another member of the Board will be appointed by the Chairman (or, failing that, by the other members of the Board) to act as chairman of the hearing.

Proceedings before the Board are generally conducted in a similar way to those before the Hearings Committee as set out in section 7(c) above, using the procedure set out in the Board’s Rules. In addition, the Board or the chairman of the hearing may give such directions as it or he considers appropriate for the conduct and determination of the case.

## **INTRODUCTION CONTINUED**

The chairman of the hearing may, on behalf of the Board, deal with appeals relating to procedural directions of the Hearings Committee, or appeals that he considers to have no reasonable prospect of success, without convening the Board and without holding an oral hearing.

The Board provides its decision to the parties in writing as soon as practicable. Decisions of the Board are usually published in a public statement, save for matters redacted in order to protect confidential or commercially sensitive information (redaction being allowed following a request by one of the parties to the hearing and at the discretion of the chairman of the hearing). Any public statement of the Board will be issued as promptly as possible, having regard to all the circumstances of the case, after the decision has been provided in writing to the parties. In certain circumstances, the Board may issue a public statement of its decision (without providing reasons at this stage) in advance of the publication of the full decision.

### **(c) Remedies**

The Board may confirm, vary, set aside, annul or replace the contested ruling of the Hearings Committee. On reaching its decision, the Board remits the matter to the Hearings Committee with such directions (if any) as the Board (or the chairman of the hearing) considers appropriate for giving effect to its (or his) decision. The Hearings Committee will give effect to the Board's decision.

## **9 PROVIDING INFORMATION AND ASSISTANCE TO THE PANEL AND THE PANEL'S POWERS TO REQUIRE DOCUMENTS AND INFORMATION**

This section sets out the rules according to which persons dealing with the Panel must provide information and assistance to the Panel.

### **(a) Dealings with and assisting the Panel**

The Panel expects any person dealing with it to do so in an open and co-operative way. It also expects prompt co-operation and assistance from persons dealing with it and those to whom enquiries and other requests are directed. In dealing with the Panel, a person must disclose to the Panel any information known to them and relevant to the matter being considered by the Panel (and correct or update that information if it changes). A person dealing with the Panel or to whom enquiries or requests are directed must take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel.

A person is entitled to resist providing information or documents on the grounds of legal professional privilege.

**INTRODUCTION CONTINUED**

Where a matter has been determined by the Panel and a person becomes aware that information they supplied to the Panel was incorrect, incomplete or misleading, that person must promptly contact the Panel to correct the position. In addition, where a determination of the Panel has continuing effect (such as the grant of exempt status or a concert party ruling), the party or parties to that determination must promptly notify the Panel of any new information unless they reasonably consider that it would not be likely to have been relevant to that determination.

**(b) Power to require documents and information**

Section 947 of the Act gives the Panel certain powers to require documents and information. It provides that, where documents or information are reasonably required in connection with the exercise of its functions, the Panel may by notice in writing require any person:

- (i) to produce any documents that are specified or described in the notice; or
- (ii) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice,

within such reasonable period and at such place as is specified in the notice. It may also require any information or document so provided to be verified or authenticated in such manner as it may reasonably require. Where the Panel imposes a requirement under section 947 of the Act, the addressee must comply with that requirement. Failure to comply with any requirement is a breach of the Code.

A person is entitled to resist providing information or documents on the grounds of legal professional privilege.

**10 ENFORCING THE CODE**

Sections 10(a) to 10(c) set out certain rules pursuant to which the Panel enforces the Code. Section 10(e) sets out the “offer document rules” and the “response document rules” for the purposes of section 953 of the Act.

It is the practice of the Panel, in discharging its functions under the Code, to focus on the specific consequences of breaches of the Code with the aim of providing appropriate remedial or compensatory action in a timely manner. Furthermore, in respect of certain breaches of the Code, disciplinary action may be appropriate (see section 11 below). For the purposes of section 956(2) of the Act, no contravention of any requirement imposed by or under rules shall render any transaction void or unenforceable or affect the validity of any other thing.

**INTRODUCTION CONTINUED****(a) Requirement of promptness in dealings with the Executive**

If a complaint is to be made that the Code has been breached, it must be made promptly, in default of which the Executive may, at its discretion, decide not to consider the complaint. Similarly, where a person who has made a complaint to the Executive fails to comply with a deadline set by the Executive, the Executive may decide to disregard the complaint in question.

**(b) Compliance rulings**

If the Panel is satisfied that:

(i) there is a reasonable likelihood that a person will contravene a requirement imposed by or under rules; or

(ii) a person has contravened a requirement imposed by or under rules,

the Panel may give any direction that appears to it to be necessary in order:

(A) to restrain a person from acting (or continuing to act) in breach of rules; or

(B) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules; or

(C) otherwise to secure compliance with rules.

**(c) Compensation rulings**

Where a person has breached the requirements of any of Rules 6, 9, 11, 14, 15, 16.1 or 35.3 of the Code, the Panel may make a ruling requiring the person concerned to pay, within such period as is specified, to the holders, or former holders, of securities of the offeree company such amount as it thinks just and reasonable so as to ensure that such holders receive what they would have been entitled to receive if the relevant Rule had been complied with. In addition, the Panel may make a ruling requiring simple or compound interest to be paid at a rate and for a period (including in respect of any period prior to the date of the ruling and until payment) to be determined.

**(d) Enforcement by the Courts**

Under section 955 of the Act, the Panel may seek enforcement by the courts. If the court is satisfied that:

(i) there is a reasonable likelihood that a person will contravene a requirement imposed by or under rules; or

(ii) a person has contravened a requirement imposed by or under rules or a requirement imposed under section 947 of the Act,

**INTRODUCTION CONTINUED**

the court may make any order it thinks fit to secure compliance with the requirement. Any failure to comply with a resulting court order may be a contempt of court.

**(e) Bid documentation rules**

For the purposes of section 953 of the Act, the “offer document rules” and the “response document rules” are those parts of Rules 24 and 25 respectively which are set out in Appendix 6 and, in each case, Rule 27 to the extent that it requires the inclusion of material changes to, or the updating of, the information in those parts of Rules 24 or 25, as the case may be, in relation to offer documents and offeree board circulars and the revised offer documents and subsequent offeree board circulars referred to in Rules 32.1 and 32.6 respectively.

**11 DISCIPLINARY POWERS**

This section sets out the disciplinary rules of the Panel in connection with breaches and alleged breaches of the Code.

**(a) Disciplinary action**

The Executive may itself deal with a disciplinary matter where the person who is to be subject to the disciplinary action agrees the facts and the action proposed by the Executive. In any other case, where it considers that there has been a breach of the Code, the Executive may commence disciplinary proceedings before the Hearings Committee. The person concerned is informed in writing of the alleged breach and of the matters which the Executive will present to the Hearings Committee. Disciplinary actions are conducted in accordance with the Rules of Procedure of the Hearings Committee, which are available on the Panel’s website.

**(b) Sanctions or other remedies for breach of the Code**

If the Hearings Committee finds a breach of the Code or of a ruling of the Panel, it may:

- (i) issue a private statement of censure; or
- (ii) issue a public statement of censure; or
- (iii) suspend or withdraw any exemption, approval or other special status which the Panel has granted to a person, or impose conditions on the continuing enjoyment of such exemption, approval or special status, in respect of all or part of the activities to which such exemption, approval or special status relates; or

## **INTRODUCTION CONTINUED**

- (iv) report the offender's conduct to a United Kingdom or overseas regulatory authority or professional body (most notably the Financial Conduct Authority ("FCA")) so that that authority or body can consider whether to take disciplinary or enforcement action (for example, the FCA has power to take certain actions against an authorised person or an approved person who fails to observe proper standards of market conduct, including the power to fine); or
- (v) publish a Panel Statement indicating that the offender is someone who, in the Hearings Committee's opinion, is not likely to comply with the Code. The Panel Statement will normally indicate that this sanction will remain effective for only a specified period. The rules of the FCA and certain professional bodies oblige their members, in certain circumstances, not to act for the person in question in a transaction subject to the Code, including a dealing in relevant securities requiring disclosure under Rule 8 (so called "cold-shouldering"). For example, the FCA's rules require a person authorised under the Financial Services and Markets Act 2000 ("FSMA") not to act, or continue to act, for any person in connection with a transaction to which the Code applies if the firm has reasonable grounds for believing that the person in question, or his principal, is not complying or is not likely to comply with the Code.

## **12 CO-OPERATION AND INFORMATION SHARING**

This section summarises the relevant provisions of the Act and sets out the rules as to the basis on which the Panel will effect service of documents under Article 4(4) of the Directive and the professional secrecy obligations applying in relation to information held by the Panel in connection with the exercise of its functions which does not fall within section 948 of the Act.

Under section 950 of the Act, the Panel must, to the extent it has power to do so, take such steps as it considers appropriate to co-operate with:

- (a) the FCA, the Prudential Regulation Authority and the Bank of England;
- (b) other supervisory authorities designated for the purposes of the Directive; and
- (c) regulators outside the United Kingdom having functions similar to the Panel, the FCA or the Prudential Regulation Authority, or similar to the regulatory functions of the Bank of England,

including by the sharing of information which the Panel is permitted to disclose (see below). It may also exercise its powers to require documents and information (see section 9(b) above) for this purpose.

**INTRODUCTION CONTINUED**

Where any supervisory authority designated for the purposes of the Directive by another member state or any authority responsible for the supervision of capital markets in another member state requests the Panel to serve any legal document in pursuance of its obligation of co-operation under Article 4(4) of the Directive, the Panel shall serve that document by first class post to the address specified for service in the request, and shall inform the requesting authority accordingly. No other method of service will be adopted by the Panel, even where the request specifies another method of service. In cases where:

- (a) no address for service is specified in the request; or
- (b) the request specifies an address for service outside of the United Kingdom; or
- (c) service of the document is validly refused by the party upon whom it is to be served; or
- (d) the Panel has been unable to serve the document for any other reason,

the Panel shall return the document unserved to the requesting authority, along with a statement of the reasons for non-service.

Under section 948 of the Act, information received by the Panel in connection with the exercise of its statutory functions may not be disclosed without the consent of the individual (where it concerns a person's private affairs) or business to which it relates except as permitted by the Act. Schedule 2 of the Act (as amended by The Companies Act 2006 (Amendment of Schedule 2) (No 2) Order 2009) includes gateways to allow the Panel to pass information it receives to United Kingdom and overseas regulatory authorities and other persons in accordance with the conditions laid down in that Schedule. The circumstances in which this may occur include, but are not limited to, the circumstances falling within paragraph 11(b)(iv) above.

Information (in whatever form) relating to the private affairs of an individual or to any particular business not falling within section 948 of the Act which is created or held by the Panel in connection with the exercise of its functions, will not be disclosed by the Panel except as permitted in the circumstances set out in sections 948(2), (3) and (8) of the Act. A direct or indirect recipient of such information from the Panel may disclose it in the circumstances set out in sections 948(2), (3), (6) and (8) of the Act.

The Panel works closely with the FCA in relation to insider dealing and market abuse.

## **INTRODUCTION CONTINUED**

### **13 FEES AND CHARGES**

The document charges set out in the Code shall be payable by the persons and in the circumstances set out in the Code.

Third parties shall pay such charges as the Panel may reasonably require for any goods (including copies of the Code) or services (including in relation to the granting, and maintenance, of exempt principal trader or exempt fund manager status as set out in the Definitions section of the Code) it provides. These charges are set out on the Panel's website.

### **14 ISLE OF MAN**

Chapter 1 of Part 28 of the Act has been extended to the Isle of Man with certain modifications by The Companies Act 2006 (Extension of Takeover Panel Provisions) (Isle of Man) Order 2008 (as amended by The Companies Act 2006 (Extension of Takeover Provisions) (Isle of Man) Order 2009). The rules set out in the Code have statutory effect in the Isle of Man by virtue of these Orders.

### **15 JERSEY**

The Panel has been appointed by the Companies (Appointment of Takeovers and Mergers Panel) (Jersey) Order 2009 made under Article 2 of the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009 (the "Jersey Law"), to carry out certain regulatory functions in relation to takeovers and mergers under Jersey law. The rules set out in the Code have statutory effect in Jersey by virtue of the Jersey Law and the Jersey Law contains provisions equivalent to the sections of the Act referred to in section 9(b), the second paragraph of section 10, section 10(d) and section 12 of the Introduction.

### **16 GUERNSEY**

The Panel has been appointed under the Companies (Guernsey) Law, 2008 (the "Guernsey Law") to carry out certain regulatory functions in relation to takeovers and mergers under Guernsey law. The rules set out in the Code have statutory effect in Guernsey by virtue of the Guernsey Law and the Guernsey Law contains provisions equivalent to the sections of the Act referred to in section 9(b), the second paragraph of section 10, section 10(d) and section 12 of the Introduction.

**GENERAL PRINCIPLES**

- 1. All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.**
- 2. The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business.**
- 3. The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.**
- 4. False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.**
- 5. An offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.**
- 6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.**

## DEFINITIONS

### Acting in concert

*This definition has particular relevance to mandatory offers and further guidance with regard to behaviour which constitutes acting in concert is given in the Notes on Rule 9.1.*

Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate control (as defined below) of a company or to frustrate the successful outcome of an offer for a company. A person and each of its affiliated persons will be deemed to be acting in concert all with each other (see Note 2 below).

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

- (1) a company, its parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies, all with each other (for this purpose ownership or control of 20% or more of the equity share capital of a company is regarded as the test of associated company status);
- (2) a company with any of its directors (together with their close relatives and related trusts);
- (3) a company with any of its pension schemes and the pension schemes of any company covered in (1);
- (4) a fund manager (including an exempt fund manager) with any investment company, unit trust or other person whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;
- (5) a connected adviser with its client and, if its client is acting in concert with an offeror or with the offeree company, with that offeror or with that offeree company respectively, in each case in respect of the interests in shares of that adviser and persons controlling#, controlled by or under the same control as that adviser (except in the capacity of an exempt fund manager or an exempt principal trader); and
- (6) directors of a company which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent. (See Note 5 on this definition.)

*#See Note at end of Definitions Section.*

**DEFINITIONS CONTINUED****NOTES ON ACTING IN CONCERT****1. Break up of concert parties**

*Where the Panel has ruled that a group of persons is acting in concert, it will be necessary for clear evidence to be presented to the Panel before it can be accepted that the position no longer obtains.*

**2. Affiliated persons**

*For the purposes of this definition an “affiliated person” means any undertaking in respect of which any person:*

- (a) has a majority of the shareholders’ or members’ voting rights;*
- (b) is a shareholder or member and at the same time has the right to appoint or remove a majority of the members of its board of directors;*
- (c) is a shareholder or member and alone controls a majority of the shareholders’ or members’ voting rights pursuant to an agreement entered into with other shareholders or members; or*
- (d) has the power to exercise, or actually exercises, dominant influence or control.*

*For these purposes, a person’s rights as regards voting, appointment or removal shall include the rights of any other affiliated person and those of any person or entity acting in his own name but on behalf of that person or of any other affiliated person.*

**3. Underwriting arrangements**

*The relationship between an underwriter (or sub-underwriter) of a cash alternative offer and an offeror may be relevant for the purpose of this definition. Underwriting arrangements on arms’ length commercial terms would not normally amount to an agreement or understanding within the meaning of acting in concert. The Panel recognises that such underwriting arrangements may involve special terms determined by the circumstances, such as weighting of commissions by reference to the outcome of the offer. However, in some cases, features of underwriting arrangements, for example the proportion of the ultimate total liability assumed by an underwriter, the commission structure or the degree of involvement of the underwriter with the offeror in connection with the offer, may be such as to lead the Panel to conclude that a sufficient level of understanding has been created between the offeror and the underwriter to amount to an agreement or understanding within the meaning of acting in concert. In cases of doubt, the Panel should be consulted.*

## **DEFINITIONS CONTINUED**

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

#### **4. Other statutory or regulatory provisions**

*This definition applies only in respect of the relevant provisions of the Code. Any Panel view expressed in relation to “acting in concert” can only relate to the Code and should not be taken as guidance on the interpretation of any other statutory or regulatory provisions.*

#### **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.*

#### **6. Consortium offers**

*Investors in a consortium (eg through a vehicle company formed for the purpose of making an offer) will normally be treated as acting in concert with the offeror. Where such an investor is part of a larger organisation, the Panel should be consulted to establish which other parts of the organisation will also be regarded as acting in concert.*

*Where the investment in the consortium is, or is likely to be, 10% or less of the equity share capital (or other similar securities) of the offeror, the Panel will normally be prepared to waive the acting in concert presumption in relation to other parts of the organisation, including any connected fund manager or*

**DEFINITIONS CONTINUED****NOTES ON ACTING IN CONCERT continued**

*principal trader, provided it is satisfied as to the independence of those other parts from the investor. Where the investment is, or is likely to be, more than 10% but less than 50%, the Panel may be prepared to waive the acting in concert presumption in relation to other parts of the organisation depending on the circumstances of the case. (See also Connected fund managers and principal traders in the Definitions Section and Rule 7.2.)*

**7. Pension schemes**

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

**8. Sub-contracted fund managers**

*Where a fund manager sub-contracts discretionary management of funds to another independent fund manager, the Panel will normally regard those funds as controlled by the latter if the discretion regarding dealing, voting and offer acceptance decisions relating to the funds, originally granted to the fund manager, has been transferred to the sub-contracted fund manager and presumption (4) will apply to the sub-contracted fund manager in respect of those funds. This approach assumes that the sub-contracted fund manager does not take instructions from the beneficial owner or from the originally contracted manager on the dealings in question and that fund management arrangements are not established or used to avoid disclosure.*

**9. Irrevocable commitments**

*A person will not normally be treated as acting in concert with an offeror or the offeree company by reason only of giving an irrevocable commitment. However, the Panel will consider the position of such a person in relation to the offeror or the offeree company (as the case may be) in order to determine whether he is acting in concert if either:*

- (a) the terms of the irrevocable commitment give the offeror or the offeree company (as the case may be) either the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to the shares or general control of them; or*
- (b) the person acquires an interest in more shares.*

## DEFINITIONS CONTINUED

### NOTES ON ACTING IN CONCERT *continued*

*The Panel should be consulted before the acquisition of any interest in shares in such circumstances.*

#### **10. Disclosure where presumption rebutted**

*Where it is accepted by the Panel that a person who would normally be presumed to be acting in concert with either an offeror or the offeree company should not in fact be considered in a particular case to be acting in concert with that party, the Panel may, where it considers it appropriate, require the person concerned to make private disclosures to the Panel (containing the details that would be required to be disclosed under Rule 8.4) of any dealings by it in any relevant securities of any party to the offer.*

#### **11. Indemnity and other dealing arrangements**

*(a) For the purpose of this Note, a dealing arrangement includes any indemnity or option arrangements, and any agreement or understanding, formal or informal, of whatever nature, relating to relevant securities which may be an inducement to deal or refrain from dealing.*

*(b) If any person is party to a dealing arrangement of the kind referred to in Note 11(a) with any offeror or any person acting in concert with any offeror, whether in respect of relevant securities of that offeror or the offeree company or any competing offeror, such person will be treated (during an offer period) as acting in concert with that offeror. If any person is party to a dealing arrangement of the kind referred to in Note 11(a) with an offeree company or any person acting in concert with an offeree company, such person will be treated (during an offer period) as acting in concert with the offeree company.*

*Such dealing arrangements must be disclosed as required by Note 2 on Rule 2.4, Rule 2.7(c)(viii), Notes 5 and 6 on Rule 8, Rule 24.13 and Rule 25.6.*

*(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.*

*(d) See also Rule 4.4.*

#### **Business day**

A business day is a day on which the London Stock Exchange is open for the transaction of business.

#### **Cash acquisitions**

Acquisitions for cash include contracts or arrangements where the consideration consists of a debt instrument capable of being redeemed in less than 3 years.

**DEFINITIONS CONTINUED****Cash offeror**

An offeror (or potential offeror) which has announced, or in respect of which the offeree company has announced, that its offer is, or is likely to be, solely in cash. A non-convertible debt instrument will normally be treated as cash.

**CMA**

The Competition and Markets Authority

**Competition reference period**

Competition reference period means the period from the time when an announcement is made of a Phase 2 CMA reference or of the initiation of Phase 2 European Commission proceedings, until the time of:

- (a) an announcement of clearance (including clearance subject to conditions) or prohibition by the CMA or the Secretary of State (as appropriate); or
- (b) the issuance of a decision under Article 8(1), Article 8(2) or Article 8(3) of Council Regulation 139/2004/EC; or
- (c) the expiry of the time limits set out in Article 10(3) of Council Regulation 139/2004/EC with no decision having been issued by the European Commission and the offer thereby being deemed compatible with the internal market under Article 10(6) of the Regulation.

**Connected adviser**

Connected adviser normally includes only the following:

- (1) in relation to the offeror or the offeree company:
  - (a) an organisation which is advising that party in relation to the offer; and
  - (b) a corporate broker to that party; and
- (2) in relation to a person who is acting in concert with the offeror or the offeree company, an organisation which is advising that person either:
  - (a) in relation to the offer; or
  - (b) in relation to the matter which is the reason for that person being a member of the relevant concert party.

Such references do not normally include a corporate broker which is unable to act in connection with the offer because of a conflict of interest.

## **DEFINITIONS CONTINUED**

### **Connected fund managers and principal traders**

A fund manager or principal trader will normally be connected with an offeror or the offeree company, as the case may be, if the fund manager or principal trader is controlled# by, controls or is under the same control as:

- (1) an offeror or any person acting in concert with it (for example as a result of being an investor in a consortium (see also Note 6 on the definition of acting in concert));
- (2) the offeree company or any person acting in concert with the offeree company; or
- (3) any connected adviser to any person covered in (1) or (2).

### **Control**

Control means an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights (as defined below) of a company, irrespective of whether such interest or interests give de facto control.

### **Dates, periods of time and London time**

Unless otherwise stated in the Code:

- (1) a reference to the date of an event is to the time of occurrence of the event on the day in question;
- (2) where a period of time is calculated from a stated event, the day on which that event occurs should be excluded from the calculation of the period (this is not relevant to the definition of an offer period); and
- (3) all references to time are to the time in London.

### **Dealings**

A dealing includes the following:

- (a) the acquisition or disposal of securities, of the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to securities, or of general control of securities;
- (b) the taking, granting, acquisition, disposal, entering into, closing out, termination, exercise (by either party) or variation of an option (including a traded option contract) in respect of any securities;
- (c) subscribing or agreeing to subscribe for securities;
- (d) the exercise or conversion, whether in respect of new or existing securities, of any securities carrying conversion or subscription rights;

*#See Note at end of Definitions Section.*

**DEFINITIONS CONTINUED**

(e) the acquisition of, disposal of, entering into, closing out, exercise (by either party) of any rights under, or variation of, a derivative referenced, directly or indirectly, to securities;

(f) entering into, terminating or varying the terms of any agreement to purchase or sell securities;

(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

(h) any other action resulting, or which may result, in an increase or decrease in the number of securities in which a person is interested or in respect of which he has a short position.

**NOTES ON DEALINGS****1. Indemnity and other dealing arrangements**

*Dealing arrangements of the kind referred to in Note 11 on the definition of acting in concert in relation to relevant securities which are entered into during the offer period by any offeror, the offeree company or a person acting in concert with any offeror or the offeree company must be disclosed as required by Rule 2.7(c)(viii), Notes 5 and 6 on Rule 8, Rule 24.13 and Rule 25.6.*

**2. Securities borrowing and lending**

*Securities borrowing and lending transactions are not regarded as dealings. However, under Rule 4.6, if an offeror, the offeree company or any person acting in concert with an offeror or the offeree company enters into, or takes action to unwind, a securities borrowing or lending transaction (including any financial collateral arrangement of the kind referred to in Note 4 on Rule 4.6) in respect of relevant securities of a securities exchange offeror or, with the Panel's consent, the offeree company, the transaction must be disclosed as if it were a dealing in relevant securities (see Note 5(l) on Rule 8).*

**Derivative**

Derivative includes any financial product whose value in whole or in part is determined directly or indirectly by reference to the price of an underlying security.

**NOTE ON DEFINITION OF DERIVATIVE**

*The term "derivative" is intentionally widely defined to encompass all types of derivative transactions. However, it is not the intention of the Code to restrict transactions in, or require disclosure of, derivatives which are not connected with an offer or potential offer. The Panel will not normally regard a derivative*

**DEFINITIONS CONTINUED****NOTE ON DEFINITION OF DERIVATIVE continued**

*which is referenced to a basket or index of securities, including relevant securities, as connected with an offer or potential offer if at the time of dealing the relevant securities in the basket or index represent less than 1% of the class in issue and, in addition, less than 20% of the value of the securities in the basket or index. In the case of any doubt, the Panel should be consulted.*

**Directors**

Directors include persons in accordance with whose instructions the directors or a director are accustomed to act.

**Electronic form**

A document, an announcement or any information will be sent in electronic form if it is:

- (1) sent by means of electronic equipment for the processing or storage of data; and
- (2) entirely transmitted and conveyed by wire, radio, optical or other electromagnetic means,

provided that the sender reasonably considers that the form in which it is sent, and the means by which it is sent, will enable the recipient to read and retain a copy of it.

**Employee representative**

An employee representative is:

- (a) a representative of an independent trade union, where that trade union has been recognised by the offeror or the offeree company in respect of some or all of its employees; and
- (b) any other person who has been elected or appointed by employees to represent employees for the purposes of information and consultation.

**Exempt fund manager**

An exempt fund manager is a person who manages investment accounts on a discretionary basis and is recognised by the Panel as an exempt fund manager for the purposes of the Code (see Notes under Exempt principal trader).

**Exempt principal trader**

An exempt principal trader is a principal trader who is recognised by the Panel as an exempt principal trader for the purposes of the Code.

**DEFINITIONS CONTINUED****NOTES ON EXEMPT FUND MANAGER AND EXEMPT PRINCIPAL TRADER**

1. *Persons who manage investment accounts on a discretionary basis and principal traders must apply to the Panel in order to seek the relevant exempt status and will have to comply with any requirements imposed by the Panel as a condition of its granting such status.*

2. *When a principal trader or fund manager is connected with the offeror or offeree company, exempt status is not relevant unless the sole reason for the connection is that the principal trader or fund manager is controlled# by, controls or is under the same control as a connected adviser to:*

(1) *the offeror;*

(2) *the offeree company; or*

(3) *a person acting in concert with the offeror (for example as a result of being an investor in a consortium) or with the offeree company.*

*References in the Code to exempt principal traders or exempt fund managers should be construed accordingly. (See also Rule 7.2.)*

3. *The effect of a principal trader or fund manager having exempt status is that presumption (5) of the definition of acting in concert will not apply. However, the principal trader or fund manager will still be regarded as connected with the offeror or offeree company, as appropriate. Connected exempt principal traders, but not connected exempt fund managers, must comply with Rule 38. Connected exempt principal traders and connected exempt fund managers must comply with the relevant provisions of Rule 8.*

4. *In appropriate cases, a fund manager based overseas may be granted special exempt status subject to its satisfying certain conditions. References in the Code to exempt fund managers (with the exception of those in Rule 8.6) include such special exempt fund managers, subject always to the conditions on which such special exempt status is granted in any particular case.*

5. *In appropriate cases, a trading entity may be granted exempt status on an ad hoc basis subject to the satisfaction of certain conditions. References in the Code to exempt principal traders include persons granted such ad hoc exempt status, for so long as the grant of such exempt status remains valid and subject always to the conditions on which such ad hoc exempt status is granted in any particular case.*

**Hard copy form**

A document, an announcement or any information will be sent in hard copy form if it is sent in a paper copy or similar form capable of being read.

*#See Note at end of Definitions Section.*

## DEFINITIONS CONTINUED

### Interests in securities

*This definition and its Notes apply equally to references to interests in shares and interests in relevant securities.*

A person who has long economic exposure, whether absolute or conditional, to changes in the price of securities will be treated as interested in those securities. A person who only has a short position in securities will not be treated as interested in those securities.

In particular, a person will be treated as having an interest in securities if:

- (1) he owns them;
- (2) he has the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to them or has general control of them;
- (3) by virtue of any agreement to purchase, option or derivative he:
  - (a) has the right or option to acquire them or call for their delivery; or
  - (b) is under an obligation to take delivery of them,

whether the right, option or obligation is conditional or absolute and whether it is in the money or otherwise; or

- (4) he is party to any derivative:
  - (a) whose value is determined by reference to their price; and
  - (b) which results, or may result, in his having a long position in them; and
- (5) in the case of Rule 5 only, he has received an irrevocable commitment in respect of them.

## NOTES ON INTERESTS IN SECURITIES

### 1. Gross interests

*The number of securities in which a person is treated as having an interest is normally the gross number, aggregating the number of securities falling under each of paragraphs (1) to (4) (and, for the purposes of Rule 5 only, also paragraph (5)) above. If an interest in securities falls within more than one paragraph, the person shall be treated as interested in the highest number determined under the relevant paragraphs. Short positions should not normally be deducted.*

*However, if each of the following conditions is met, the Panel will normally allow offsetting positions to be netted off against each other:*

**DEFINITIONS CONTINUED****NOTES ON INTERESTS IN SECURITIES continued**

- (a) *the offsetting positions are in respect of the same class of relevant security;*
- (b) *the offsetting positions are in respect of the same investment product;*
- (c) *save for the number of securities in question, the terms of the offsetting positions are the same, eg as to strike price and, if appropriate, exercise period; and*
- (d) *the counterparty to the offsetting positions is the same in each case.*

**2. Interests of two or more persons**

*As a result of the way in which interests in securities are categorised, two or more persons may be treated as interested in the same securities. For example, where a shareholder grants a call option to another person, the shareholder will be interested in the shares the subject of the option as a result of paragraph (1) of the definition of interests in securities, and the option holder will be interested in those shares as a result of paragraph (3) of the definition.*

**3. Number of securities concerned**

- (a) *Where the number of securities the subject of an agreement to purchase, option or derivative is not fixed, a person will normally be treated as interested in the maximum possible number of securities.*
- (b) *Where the value of any derivative is determined by reference to the price of a number of securities multiplied by a particular factor, a person will be treated as interested in the number of reference securities multiplied by the relevant factor.*
- (c) *Where a derivative is not referenced to any stated number (or maximum number) of securities, a person will normally be treated as interested in the gross number of securities to changes in the price of which he has, or may have, economic exposure.*

**4. Securities borrowing and lending**

*If a person has borrowed or lent securities, he will normally be treated as interested in any securities which he has lent but (except in the circumstances set out in Note 17 on Rule 9.1) will not normally be treated as interested in any securities which he has borrowed. If a person has on-lent securities which he has borrowed, he will not normally be treated as interested in those securities.*

**DEFINITIONS CONTINUED****NOTES ON INTERESTS IN SECURITIES continued****5. New shares**

*Where a person holds securities convertible into, or warrants or options in respect of, new shares, he will be treated as interested in those securities, warrants or options but will not be treated as interested in the new shares which may be issued upon conversion or exercise. However, the acquisition of new shares on conversion or exercise of any convertible securities, warrants or options will be treated as an acquisition of an interest in the new shares which are then issued.*

**6. Proxies and corporate representatives**

*A person will not be treated as having an interest in securities by reason only that he has been appointed as a proxy to vote at a specified general or class meeting of the company concerned, or has been authorised by a corporation to act as its representative at any general or class meeting or meetings.*

**7. Security interests**

*A bank taking security over shares or other securities in the normal course of its business will not normally be considered to be interested in those shares or securities.*

**8. Other statutory or regulatory provisions**

*This definition applies only in respect of the relevant provisions of the Code. Any Panel view expressed in relation to interests in securities can only relate to the Code and should not be taken as guidance on the interpretation of any other statutory or regulatory provisions.*

**9. Acquisitions of interests in securities**

*(a) References to a person acquiring an interest in securities include any transaction or dealing (including the variation of the terms of an option in respect of, or derivative referenced to, securities) which results in an increase in the number of securities (including, where relevant, securities which have been assented to an offer) in which the person is treated as interested.*

*(b) A person will not be treated as acquiring an interest in securities which are the subject of an irrevocable commitment received by him as a result only of paragraph (3) of the definition of interests in securities.*

*(c) The Panel should be consulted if an offeror or any person acting in concert with it proposes to enter into a conditional share sale and purchase agreement or option in the context of the offer.*

**DEFINITIONS CONTINUED****Irrevocable commitments and letters of intent**

Irrevocable commitments and letters of intent include irrevocable commitments and letters of intent:

- (a) to accept or not to accept (or to procure that any other person accept or not accept) an offer; or
- (b) to vote (or to procure that any other person vote) in favour of or against a resolution of an offeror or the offeree company (or of its shareholders) in the context of an offer, including a resolution to approve or to give effect to a scheme of arrangement.

**Multilateral trading facility**

Multilateral trading facility has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(15)).

**Offer**

Any reference to an offer includes any transaction subject to the Code as referred to in section 3(b) of the Introduction.

**Offeree company**

Any reference to an offeree company includes a potential offeree company.

In the case of a scheme of arrangement, a reference to the offeree company should normally be construed as a reference to the company whose shares are proposed to be acquired under the scheme.

**Offeror**

Offeror includes companies wherever incorporated and individuals wherever resident. Any reference to an offeror includes a potential offeror.

In the case of a scheme of arrangement, a reference to an offeror should normally be construed as a reference to the person who it is proposed will acquire shares of the offeree company under the scheme.

**Offer period**

The offeree companies that are in an offer period at any particular time, and any offerors or publicly identified potential offerors, are set out in the Disclosure Table on the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk).

**DEFINITIONS CONTINUED**

An offer period will commence when the first announcement is made of an offer or possible offer for a company, or when certain other announcements are made, such as an announcement that a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of the company or that the board of the company is seeking potential offerors.

Subject to Note 3, an offer period will end when an announcement is made that an offer has become or has been declared unconditional as to acceptances, that a scheme of arrangement has become effective, that all announced offers have been withdrawn or have lapsed or following certain other announcements having been made (such as all publicly identified potential offerors having made a statement to which Rule 2.8 applies).

**NOTES ON OFFER PERIOD****1. Schemes of arrangement**

*In the case of a scheme of arrangement, provisions of the Code that apply during the course of the offer, or before the offer closes for acceptance, will apply until it is announced that the scheme has become effective or that it has lapsed or been withdrawn.*

**2. Competition reference periods**

*See Rule 12.2.*

**3. First closing date**

*Where an offer is unconditional from the outset, or becomes or is declared unconditional as to acceptances prior to the first closing date, the offer period will nevertheless continue until the first closing date.*

**Official List**

The list maintained by the FCA in accordance with section 74(1) of the FSMA for the purposes of Part 6 of the FSMA.

**Ordinary course profit forecast**

A profit forecast published by the offeree company or a securities exchange offeror in accordance with its established practice and as part of the ordinary course of its communications with its shareholders and the market.

**Parties to the offer**

The offeree company and any offeror or competing offeror whose identity has been publicly announced (including, in each case, any potential offeree company, offeror or competing offeror).

**DEFINITIONS CONTINUED****Pension scheme**

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

**Person with information rights**

A person in respect of whom a nomination pursuant to the provisions of the Companies Act 2006 has been made (and has not been suspended, revoked or ceased to have effect) by a registered shareholder in an offeree company which has its registered office in the United Kingdom for that person to receive a copy of all communications that the offeree company sends to its shareholders generally or to any class of its shareholders that includes the registered shareholder making the nomination.

**Phase 2 CMA reference**

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

**Phase 2 European Commission proceedings**

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

**Principal trader**

A principal trader is a person who:

- (1) is registered as a market-maker with a recognised investment exchange, or is accepted by the Panel as a market-maker; or
- (2) is a member firm of a recognised investment exchange dealing as principal in order book securities.

**Profit estimate**

A profit forecast for a financial period which has expired and for which audited results have not yet been published.

**Profit forecast**

A form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used.

**DEFINITIONS CONTINUED****Quantified financial benefits statement**

A quantified financial benefits statement is either:

- (a) a statement by a securities exchange offeror or the offeree company quantifying any financial benefits expected to accrue to the enlarged group if the offer is successful; or
- (b) a statement by the offeree company quantifying any financial benefits expected to accrue to the offeree company from cost saving or other measures and/or a transaction proposed to be implemented by the offeree company if the offer is withdrawn or lapses.

**Recognised intermediary**

A recognised intermediary is that part of the trading operations of a bank or securities house which is accepted by the Panel as a recognised intermediary for the purposes of the Code.

**NOTES ON RECOGNISED INTERMEDIARY**

1. *If any part of the trading operations of a bank or securities house wishes to be accepted by the Panel as a recognised intermediary, it must apply to the Panel to be granted such status and it will have to comply with any requirements imposed by the Panel as a condition of its granting such status.*

2. *Recognised intermediary status is relevant only for the purposes of Note 16 on Rule 9.1, Note 1(c) on Rule 7.2, Rule 8.3(e) and Note 5(b) on Rule 8, in each case to the extent only that the recognised intermediary is acting in a client-serving capacity. As a result, subject to Note 3 below and to the extent only that it is acting in a client-serving capacity: (i) a recognised intermediary will not be treated, for the purposes of Rule 9.1, as interested in (or as having acquired an interest in) any securities by virtue only of paragraph (3) or paragraph (4) of the definition of interests in securities; (ii) any dealings by it in relevant securities during an offer period will not be required to be publicly disclosed under Rules 8.3(a) to (d); and (iii) dealing disclosures required to be made by it under Rule 8.5(c) will need to include the details specified in Note 5(b), rather than those specified in Note 5(a), on Rule 8.*

3. *Where a recognised intermediary is, or forms part of, a principal trader connected either with an offeror or potential offeror or with the offeree company, the recognised intermediary will not benefit from the dispensations afforded by Note 16 on Rule 9.1 and Note 1(c) on Rule 7.2 after the time at which the principal trader is presumed to be acting in concert with either the offeror or potential offeror or with the directors of the offeree company (as the case may be) in accordance with Rule 7.2(a) and Rule 7.2(b) respectively. However, in accordance with Rule 7.2(c), where a recognised intermediary*

**DEFINITIONS CONTINUED****NOTES ON RECOGNISED INTERMEDIARY continued**

*is, or forms part of, an exempt principal trader which is connected with either an offeror or potential offeror or with the offeree company for the sole reason that it is controlled# by, controls or is under the same control as a connected adviser to that party, the recognised intermediary will not be presumed to be acting in concert with that party and will therefore continue to benefit from the dispensations afforded by Note 16 on Rule 9.1 and Note 1(c) on Rule 7.2.*

*Where a recognised intermediary is, or forms part of, a person acting in concert with the offeree company, it will not benefit from the exception from disclosure afforded by Rule 8.3(e) after the commencement of the offer period. Where a recognised intermediary is acting in concert with an offeror or potential offeror, it will not benefit from the exception from disclosure afforded by Rule 8.3(e) after the identity of the offeror or potential offeror with which it is acting in concert is publicly announced. After such time, disclosures should be made under Rule 8.4 or, if the recognised intermediary is, or forms part of, an exempt principal trader whose exempt status has not fallen away, Rule 8.5.*

*For the avoidance of doubt, where a recognised intermediary is, or forms part of, an exempt principal trader, its recognised intermediary status will fall away only if its exempt status falls away.*

*4. Any dealings by a recognised intermediary which is not acting in a client-serving capacity will not benefit from the dispensations afforded by Note 16 on Rule 9.1, Note 1(c) on Rule 7.2, Rule 8.3(e) and Note 5(b) on Rule 8 with the result that all such dealings by it will be subject to the provisions of the Code as if those dispensations did not apply.*

*5. Any dealings carried out by a recognised intermediary for the purpose of avoiding the usual application of the Code to such dealings will constitute a serious breach of the Code. If the Panel determines that a recognised intermediary has carried out such dealings, it will be prepared to rule, inter alia, that recognised intermediary status should be withdrawn for such period of time as the Panel may consider appropriate in the circumstances.*

**Recognised investment exchange**

Recognised investment exchange has the same meaning as in section 285(1)(a) of the FSMA.

**Regulated market**

Regulated market has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).

#See Note at end of Definitions Section.

## **DEFINITIONS CONTINUED**

### **Regulatory Information Service**

A Regulatory Information Service (“RIS”) is any of the services set out in Appendix 3 to the Listing Rules.

### **Relevant securities**

Relevant securities include:

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

### **Reverse takeover**

A transaction will be a reverse takeover if an offeror might as a result need to increase its existing issued voting equity share capital by more than 100%.

### **NOTE ON REVERSE TAKEOVER**

*The definition is of relevance only in circumstances where the offeror is a company that falls within section 3(a)(i) or (ii) of the Introduction.*

### **Scheme of arrangement or scheme**

A transaction effected by means of a scheme of arrangement under the Companies Act 2006 or similar statutory provisions in the Channel Islands or the Isle of Man.

### **Securities exchange offer**

Securities exchange offer means an offer in which the consideration includes securities of the offeror, other than loan stock or loan notes (unless such stock or notes carry substantially the same rights as any other securities of the offeror in issue or conversion or subscription rights into any such securities or into equity share capital of the offeror).

### **Securities exchange offeror**

An offeror (or potential offeror) other than a cash offeror.

### **Shares or securities**

(1) Except as set out below or as the context otherwise requires, references to shares, including when used in other expressions such as shareholders (but excluding equity share capital), include securities, and vice versa.

**DEFINITIONS CONTINUED**

(2) In paragraph 3(a)(iii) and in the second paragraph of section 3(b) of the Introduction, the securities referred to are only transferable securities carrying voting rights.

(3) In paragraphs 3(a)(i) and (ii) and in the first paragraph of section 3(b) of the Introduction, the shares/securities referred to are only those shares/securities comprised in the company's equity share capital (whether voting or non-voting) and other transferable securities carrying voting rights.

**Treasury shares**

All percentages of voting rights, share capital and relevant securities are to be calculated by reference to the relevant percentage held and in issue outside treasury. A transfer or sale of shares by a company from treasury will normally be treated in the same way as an issue of new shares.

**UKLA**

The FCA acting in its capacity as the competent authority for the purposes of Part 6 of the FSMA.

**UKLA Rules**

UKLA Rules include the Listing Rules, the Disclosure Rules and Transparency Rules and the Prospectus Rules of the FCA (or any of them as the context may require).

**Voting rights**

Except for the purpose of Rule 11, voting rights means all the voting rights attributable to the capital of a company which are currently exercisable at a general meeting.

**Website notification**

A website notification is a document sent in either hard copy form or electronic form to a person to whom a document, an announcement or any information is required to be sent, giving such person notice of the publication of the document, announcement or information on a website and providing details of the relevant website.

**NOTE ON WEBSITE NOTIFICATION**

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

**DEFINITIONS CONTINUED****NOTE ON WEBSITE NOTIFICATION continued**

*The information in a website notification must be confined to non-controversial information about an offer and should not be used for argument or invective. A website notification should not include a recommendation to take or not to take any action in relation to, or contain any view on the merits of, an offer except for a factual statement as to whether or not the offer is proceeding with the recommendation of the offeree company board. A party to an offer should not include anything other than acceptance forms, withdrawal forms, proxy cards and other forms connected with an offer in the same envelope as a website notification without the consent of the Panel.*

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

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

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

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

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

**NOTE ON DEFINITIONS**

*The normal test for whether a person is controlled by, controls or is under the same control as another person will be by reference to the definition of control. There may be other circumstances which the Panel will regard as giving rise to such a relationship (eg where a majority of the equity share capital is owned by another person who does not have a majority of the voting rights); in cases of doubt, the Panel should be consulted.*

**RULES****SECTION D. THE APPROACH, ANNOUNCEMENTS AND  
INDEPENDENT ADVICE****RULE 1. THE APPROACH**

(a) An offeror (or its advisers) must notify a firm intention to make an offer in the first instance to the board of the offeree company (or its advisers).

(b) If the offer, or an approach with regard to a possible offer, is not made by the offeror or potential offeror, the identity of that person must be disclosed to the board of the offeree company at the outset.

## **RULE 2. SECURITY BEFORE ANNOUNCEMENTS; THE TIMING AND CONTENTS OF ANNOUNCEMENTS**

### **2.1 SECURITY**

(a) Prior to the announcement of an offer or possible offer, all persons privy to confidential information, and particularly price-sensitive information, concerning the offer or possible offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if that person is made aware of the need for secrecy. All such persons must conduct themselves so as to minimise the chances of any leak of information.

(b) Financial advisers must at the very beginning of discussions warn clients of the importance of secrecy and security. Attention should be drawn to the Code, in particular to this Rule 2.1 and to restrictions on dealings.

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

An announcement is required:

(a) when a firm intention to make an offer is notified to the board of the offeree company by or on behalf of an offeror, irrespective of the attitude of the board to the offer;

(b) immediately upon an acquisition of any interest in shares which gives rise to an obligation to make an offer under Rule 9.1. The announcement that an obligation has been incurred should not be delayed while full information is being obtained; additional information can be the subject of a later supplementary announcement;

(c) when, following an approach by or on behalf of a potential offeror to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price;

(d) when, after a potential offeror first actively considers an offer but before an approach has been made to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation;

(e) when negotiations or discussions relating to a possible offer are about to be extended to include more than a very restricted number of people (outside those who need to know in the parties concerned and their immediate advisers); or

**RULE 2 CONTINUED**

**(f) when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company or when the board of a company is seeking one or more potential offerors, and:**

- (i) the company is the subject of rumour and speculation or there is an untoward movement in its share price; or**
- (ii) the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.**

**NOTES ON RULE 2.2****1. Panel to be consulted**

*(a) Whether or not a movement in the share price of a potential offeree company is untoward for the purposes of Rule 2.2(c), (d) and (f)(i) is a matter for the Panel to determine. The question will be considered in the light of all relevant facts and not solely by reference to the absolute percentage movement in the price. Facts which may be considered to be relevant in determining whether a price movement is untoward for the purposes of Rule 2.2(c), (d) and (f)(i) include general market and sector movements, publicly available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred. This list is purely illustrative and the Panel will take account of such other factors as it considers appropriate. The percentage thresholds specified below in respect of price movements relate solely to the latest point at which consultation with the Panel is required; consultation will not necessarily lead to a requirement to make an announcement.*

*(b) In the case of Rule 2.2(c), unless an immediate announcement is to be made, the Panel should be consulted at the latest when the offeree company becomes the subject of any rumour and speculation or where there is a price movement of 10% or more above the lowest share price since the time of the approach. An abrupt price rise of a smaller percentage (for example, a rise of 5% in the course of a single day) could also be regarded as untoward and accordingly the Panel should be consulted in such circumstances.*

*(c) Similarly, in the case of Rules 2.2(d) and (f)(i), the Panel should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation or where there is a material or abrupt movement in its share price after the time when, in the case of Rule 2.2(d), an offer is first actively considered by a potential offeror or, in the case of Rule 2.2(f)(i), either the potential seller or the board starts to seek one or more potential purchasers or offerors.*

**RULE 2 CONTINUED****NOTES ON RULE 2.2 continued**

(d) *In the case of Rule 2.2(e), the Panel should be consulted if the potential offeror and/or the offeree company wish to approach a wider group than the very restricted number of people referred to in the Rule without making an announcement.*

(e) *In the case of Rule 2.2(f)(ii), the Panel should be consulted prior to more than one potential purchaser or offeror being sought.*

**2. Clear statements**

*The Panel will not normally require an announcement under Rule 2.2(d) if it is satisfied that the price movement, rumour or speculation results only from a clear and unequivocal public statement, eg (a) a disclosure under the UKLA Rules; (b) an announcement of a dawn raid or an intention to purchase; or (c) an announcement of a tender offer.*

**3. Rumour and speculation during an offer period**

*Where, during an offer period, rumour and speculation specifically identifies a potential offeror which has not previously been identified in any announcement, the Panel will normally require an announcement to be made by the offeree company or the potential offeror (as appropriate), identifying that potential offeror.*

**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) the Panel 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 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.*

**RULE 2 CONTINUED****NOTES ON RULE 2.2 continued**

*(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.*

**2.3 RESPONSIBILITIES OF OFFERORS AND THE OFFEREE COMPANY**

**(a) Before a potential offeror approaches the board of the offeree company, the potential offeror is responsible for making any announcement required under Rule 2.2.**

**(b) When an obligation to make a mandatory offer under Rule 9.1 is incurred, the offeror is responsible for making the announcement required under Rule 2.2(b). See also Rule 7.1.**

**(c) Following an approach to the board of the offeree company, the offeree company is responsible for making any announcement required under Rule 2.2, except for an announcement required under Rule 2.2(b) or, where a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of a company without the involvement of the board of the offeree company, Rule 2.2(f) (in which case responsibility will rest with the potential seller of the interest).**

**(d) A potential offeror must not attempt to prevent the board of an offeree company from making an announcement relating to a possible offer, or publicly identifying the potential offeror, at any time the board considers appropriate.**

**2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER**

**(a) An announcement by the offeree company which commences an offer period must identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected).**

**RULE 2 CONTINUED**

(b) Any subsequent announcement by the offeree company which refers to the existence of a new potential offeror must identify that potential offeror, except where the announcement is made after an offeror has announced a firm intention to make an offer for the offeree company (see Rule 2.6(e)).

(c) Any announcement which commences an offer period and any subsequent announcement which first identifies a potential offeror must:

(i) specify the date on which any deadline thereby set in accordance with Rule 2.6(a) will expire; and

(ii) include a summary of the provisions of Rule 8 (see the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)).

**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.*

**2. Indemnity and other dealing arrangements**

*Where the offeree company, an offeror or any person acting in concert with the offeree company or an offeror enters into any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert before the start of the offer period or the announcement that first identifies the offeror, details of the arrangement must be included in the relevant announcement as required by Notes 6(b) and (c) on Rule 8.*

*Where a dealing arrangement of the kind referred to above is entered into during the offer period, see Note 6(a) on Rule 8.*

**3. Formal sale process**

*See Note 2 on Rule 2.6.*

**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 a potential offeror (or its directors,

**RULE 2 CONTINUED**

officials or advisers) makes such a statement and it is not withdrawn immediately if incorrect, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made, 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 or in wholly exceptional circumstances. In particular:

(i) where the statement concerned relates to the price of a possible offer (or a particular exchange ratio in the case of a possible securities exchange offer), any offer made by the potential offeror for the offeree company will be required to be made on the same or better terms. Where all or part of the consideration is expressed in terms of a monetary value, the offer or that element of the offer must be made at the same or a higher monetary value. Where all or part of the consideration has been expressed in terms of a securities exchange ratio, the offer or that element of the offer must be made on the same (or an improved) securities exchange ratio; and

(ii) where the statement concerned includes reference to the fact that the terms of the possible offer “will not be increased” or are “final” or uses a similar expression, the potential offeror will not be allowed subsequently to make an offer on better terms.

(b) The consequences of a statement to which Rule 2.5(a) applies will normally apply also to any person acting in concert with the potential offeror and to any person who is subsequently acting in concert with the potential offeror or such person.

(c) The Panel must be consulted in advance if, prior to announcing a firm intention to make an offer, a potential offeror proposes to announce any pre-conditions to the making of an offer. Any such pre-conditional possible offer announcement must:

(i) clearly state whether or not the pre-conditions must be satisfied before an offer can be made or whether they are waivable; and

(ii) include a prominent warning to the effect that the announcement does not amount to a firm intention to make an offer and that, accordingly, there can be no certainty that any offer will be made even if the pre-conditions are satisfied or waived.

**RULE 2 CONTINUED****NOTES ON RULE 2.5****1. Reservation of the right to set a statement 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 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.*

*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.*

**2. Duration of restriction**

*The restrictions imposed by Rule 2.5(a) will normally apply throughout the period during which the offeree company is in an offer period and for a further three months thereafter.*

*However, where a potential offeror has made a statement to which Rule 2.8 applies but the offeree company remains in an offer period, the restrictions imposed by Rule 2.5(a) will normally apply for three months following the making of the statement to which Rule 2.8 applies.*

**3. Statements by the offeree company**

*Any statement made by the offeree company in relation to the terms on which an offer might be made must make clear whether or not it is being made with the agreement or approval of the potential offeror. Where the statement is made with the agreement or approval of the potential offeror, the statement will be treated as one to which Rule 2.5(a) applies in the same way as if it had been made by the potential offeror itself. Where it is not so made, the statement must also include a prominent warning to the effect that there can be no certainty that an offer will be made nor as to the terms on which any offer might be made.*

**RULE 2 CONTINUED****2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT**

(a) Subject to Rule 2.6(b), by not later than 5.00 pm on the 28th day following the date of the announcement in which it is first identified, or by not later than any extended deadline, a potential offeror must 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,

unless the Panel has consented to an extension of the deadline.

(b) Rule 2.6(a) will not apply, or will cease to apply, to a potential offeror if another offeror has already announced, or subsequently announces (prior to the relevant deadline), a firm intention to make an offer for the offeree company. In such circumstances, the potential offeror will be required to clarify its intentions in accordance with Rule 2.6(d) below.

(c) The Panel will normally consent to an extension of a deadline set in accordance with Rule 2.6(a), or any previously extended deadline, at the request of the board of the offeree company and after taking into account all relevant factors, including:

- (i) the status of negotiations between the offeree company and the potential offeror; and
- (ii) the anticipated timetable for their completion.

Where the Panel consents to an extension of a deadline, the offeree company must promptly make an announcement setting out the new deadline and commenting on the matters referred to in paragraphs (i) and (ii) above.

(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 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.

**RULE 2 CONTINUED**

(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 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.)

**NOTES ON RULE 2.6****1. Deadline extensions**

*When a request to extend a deadline set under Rule 2.6(a) is made by the board of the offeree company, the Panel will normally give its decision shortly before the time at which the deadline is due to expire. The board of the offeree company may request different deadline extensions for different potential offerors or may request a deadline extension in relation to one potential offeror but not others.*

**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.*

**RULE 2 CONTINUED****2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER**

(a) An offeror should announce a firm intention to make an offer only after the most careful and responsible consideration and when the offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.

(b) Following an announcement of a firm intention to make an offer, the offeror must proceed to make the offer unless, in accordance with the provisions of Rule 13, it is permitted to invoke a pre-condition to the making of the offer or would be permitted to invoke a condition to the offer if the offer were made. However, with the consent of the Panel, an offeror need not make the offer if a competing offeror subsequently announces a firm intention to make a higher offer.

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

- (i) the terms of the offer;
- (ii) the identity of the offeror;
- (iii) all conditions or pre-conditions to which the offer or the making of an offer is subject;
- (iv) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or a condition to its offer and the consequences of its doing so, including details of any break fees payable as a result;
- (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);

**RULE 2 CONTINUED**

- (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) details of any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert to which the offeror or any person acting in concert with it is a party;
  - (ix) a summary of the provisions of Rule 8 (see the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk));
  - (x) a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2; and
  - (xi) a list of the documents published on a website in accordance with Rule 26.2 and the address of the website on which the documents are published.
- (d) Where the offer is for cash, or includes an element of cash, the announcement must include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer. (The party confirming that resources are available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash was available.)

**NOTES ON RULE 2.7****1. Unambiguous language**

*The language used in announcements should clearly and concisely reflect the position being described. In particular, the word "agreement" should be used with the greatest care. Statements should be avoided which may give the impression that persons have committed themselves to certain courses of action (eg accepting in respect of their own shares) when they have not in fact done so.*

**2. Conditions and pre-conditions**

*The Panel must be consulted in advance if a person proposes to include in an announcement:*

- (a) any pre-condition to which the making of an offer will be subject (see Rule 13.3);

**RULE 2 CONTINUED****NOTES ON RULE 2.7 continued**

- (b) a condition or pre-condition relating to financing (see Rule 13.4); or
- (c) any conditions which are not entirely objective (see Rule 13.1).

**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.*

**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:

- (a) announce an offer or possible offer for the offeree company (including a partial offer which would result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of the offeree company);
- (b) acquire any interest in shares of the offeree company if any such person would thereby become obliged under Rule 9 to make an offer;
- (c) acquire any interest in, or procure an irrevocable commitment in respect of, shares of the offeree company if the shares in which such person, together with any persons acting in concert with him, would be interested and the shares in respect of which he, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the voting rights of the offeree company;
- (d) make any statement which raises or confirms the possibility that an offer might be made for the offeree company; or
- (e) take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the potential offeror and its immediate advisers.

**RULE 2 CONTINUED**

**Failure to comply with this Rule may lead to the period of six months referred to above being extended.**

**NOTES ON RULE 2.8****1. Prior consultation**

*Any person considering making such a statement should consult the Panel in advance.*

**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.*

**RULE 2 CONTINUED****NOTES ON RULE 2.8 continued****3. Concert parties**

*The restrictions imposed by Rule 2.8 will not apply to a person acting in concert with the person making the statement to which the Rule applies provided it is made clear in the statement, or at the time the statement is made, that such person acting in concert is continuing to consider making an offer for the offeree company.*

*The restrictions imposed by Rule 2.8 will, however, normally apply to any person acting in concert with the person making the statement to which the Rule applies if the statement is made during an offer period.*

**4. Media reports**

*When considering the application of Rule 2.8, the Panel will take into account not only the statement itself but the manner of any subsequent public reporting of it.*

*Advisers must therefore ensure that directors and officials of companies are warned that they must consider carefully the implications of Rule 2.8, particularly when giving interviews to, or taking part in discussions with, the media. It is very difficult after publication to alter an impression given or remark attributed to a particular person. Control of any possible abuse lies largely with the person being interviewed. In appropriate circumstances, the Panel will require a statement of retraction or clarification.*

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

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

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

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

**NOTES ON RULE 2.9****1. Distribution of announcements**

*See Rule 30.3.*

**RULE 2 CONTINUED****NOTES ON RULE 2.9 continued****2. Other Rules**

*Announcements made under Rules 2.11, 6.2(b), 7.1, 8 (Notes 6 and 12(a)), 9.1 (Note 9), 11.1 (Note 6), 12.2(b)(ii)(A), 17.1, 24.1, 25.1, 27.1(a), 31.2, 31.6(b), 31.6(c), 31.7 (Note 2), 31.8 (Note), 31.9, 32.1(a), 32.6(a), Appendix 1.6, Appendix 5.5, Appendix 7.3, Appendix 7.6 and Appendix 7.8 must also be published in accordance with the requirements of Rule 2.9.*

**2.10 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 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 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.

Any such announcement should include, where relevant, the International Securities Identification Number (“ISIN”) for each relevant security.

If the information included in an announcement made under this Rule changes during the offer period, a revised announcement must be made as soon as possible.

**NOTES ON RULE 2.10****1. Options to subscribe**

*For the purposes of this Rule, options to subscribe for new securities in the offeree company or an offeror are not treated as a class of relevant securities.*

**2. Treasury shares**

*Only relevant securities which are held and in issue outside treasury should be included in the announcement.*

**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.

**RULE 2 CONTINUED**

(b) If any party to an offer or any person acting in concert with it has procured an irrevocable commitment or a letter of intent prior to the commencement of the offer period, it must publicly disclose 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).

(c) If a person who has given an irrevocable commitment or a letter of intent either becomes aware that he will not be able to comply with the terms of that commitment or letter or no longer intends to do so, that person must:

(i) promptly announce an update of the position together with all relevant details; or

(ii) promptly notify the relevant party to the offer and the Panel of the up-to-date position. Upon receipt of such a notification, the relevant party to the offer must promptly make an appropriate announcement of the information notified to it together with all relevant details.

(d) See also Note 9 on the definition of acting in concert.

**NOTES ON RULE 2.11****1. Disclosure in firm offer announcement**

*Where the 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 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).*

**2. Method of disclosure**

*Disclosure under this Rule 2.11 should be made in accordance with the requirements of Rule 2.9. See also Rule 26 (documents to be published on a website).*

**RULE 2 CONTINUED****NOTES ON RULE 2.11 continued****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:*

- (a) the number of relevant securities of each class to which the irrevocable commitment or letter of intent relates;*
- (b) the identity of the person from whom the irrevocable commitment or letter of intent has been procured. For this purpose, the information which should be disclosed is that which would be required by Note 5 on Rule 8 if the person concerned were disclosing a dealing in relevant securities;*
- (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 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 Rule 2.5(a).*

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

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

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

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

- (i) sent by the offeree company to its shareholders, persons with information rights and the Panel; and**
- (ii) made readily available by the offeree company to its employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of its pension scheme(s).**

**RULE 2 CONTINUED**

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

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

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

**(c) Where necessary, the offeror or the offeree company, as the case may be, should explain the implications of the announcement and, in the case of the offeree company, the fact that addresses, electronic addresses and certain other information provided by offeree company shareholders, persons with information rights and other relevant persons for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under Section 4 of Appendix 4. Any circular published under this Rule should also include a summary of the provisions of Rule 8 (see the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)).**

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

**NOTES ON RULE 2.12****1. Where a circular summarising an announcement made under Rule 2.7 is sent**

*Where, following an announcement made under Rule 2.7, a circular summarising the terms and conditions of the offer is sent or made readily available by the offeree company to its shareholders, persons with information rights, its*

**RULE 2 CONTINUED****NOTES ON RULE 2.12 continued**

*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 26.1.*

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

*See the Note on Rule 23.2.*

**3. Holders of convertible securities, options or subscription rights**

*Copies of announcements sent to offeree company shareholders and persons with information rights under Rule 2.12 must also, where practicable, be sent simultaneously to the holders of securities convertible into, rights to subscribe for and options over, shares of the same class as those to which the offer relates. An explanation must also be provided that addresses, electronic addresses and certain other information provided for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under Section 4 of Appendix 4.*

## **RULE 3. INDEPENDENT ADVICE**

### **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**

##### **1. Management buy-outs and offers by controllers**

*The requirement for competent independent advice is of particular importance in cases where the offer is a management buy-out or similar transaction or is being made by the existing controller or group of controllers. In such cases, it is particularly important that the independence of the adviser is beyond question. Furthermore, the responsibility borne by the adviser is considerable and, for this reason, the board of the offeree company or potential offeree company should appoint an independent adviser as soon as possible after it becomes aware of the possibility that an offer may be made.*

##### **2. When there is uncertainty about financial information**

*When there is a significant area of uncertainty in the most recently published accounts or interim figures of the offeree company (eg a qualified audit report, a material provision or contingent liability or doubt over the real value of a substantial asset, including a subsidiary company), the board and the independent adviser should highlight the factors which they consider important.*

##### **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.)*

### **3.2 BOARD OF AN OFFEROR COMPANY**

The board of an offeror must obtain competent independent advice on any offer when the offer being made is a reverse takeover or when the directors are faced with a conflict of interest. The substance of such advice must be made known to its shareholders.

**RULE 3 CONTINUED****NOTES ON RULE 3.2****1. General**

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

**2. Conflicts of interest**

*A conflict of interest will exist, for instance, when there are significant cross-shareholdings between an offeror and the offeree company, when there are a number of directors common to both companies or when a person has a substantial interest in both companies.*

**3.3 DISQUALIFIED ADVISERS**

**The Panel will not regard as an appropriate person to give independent advice a person who is in the same group as the financial or other professional adviser (including a corporate broker) to an offeror or who has a significant interest in or financial connection with either an offeror or the offeree company of such a kind as to create a conflict of interest (see also Appendix 3).**

**NOTES ON RULE 3.3****1. Independence of adviser**

*The Rule requires the offeree company's adviser to have a sufficient degree of independence from the offeror to ensure that the advice given is properly objective. Accordingly, in certain circumstances it may not be appropriate for a person who has had a recent advisory relationship with an offeror to give advice to the offeree company. In such cases the Panel should be consulted. The views of the board of the offeree company will be an important factor.*

**2. Investment trusts**

*A person who manages or is part of the same group as the investment manager of an investment trust company will not normally be regarded as an appropriate person to give independent advice in relation to that company.*

**RULE 3 CONTINUED****NOTES ON RULE 3.3 continued****3. Success fees**

*Certain fee arrangements between an adviser and an offeree company may create a conflict of interest which would disqualify the adviser from being regarded as an appropriate person to give independent advice to the offeree company. For example, a fee which becomes payable to an offeree company adviser only in the event of failure of an offer will normally create such a conflict of interest. In cases of doubt the Panel should be consulted.*

## SECTION E. RESTRICTIONS ON DEALINGS

### RULE 4

*NB Notwithstanding the provisions of Rule 4, a person may be precluded from dealing or procuring others to deal by virtue of restrictions contained in the Criminal Justice Act 1993 regarding insider dealing and in the FSMA regarding market abuse. Where the Panel becomes aware of instances to which such restrictions may be relevant, it will inform the FCA.*

#### **4.1 PROHIBITED DEALINGS BY PERSONS OTHER THAN THE OFFEROR**

(a) No dealings of any kind in securities of the offeree company by any person, not being the offeror, who is privy to confidential price-sensitive information concerning an offer or contemplated offer may take place between the time when there is reason to suppose that an approach or an offer is contemplated and the announcement of the approach or offer or of the termination of the discussions.

(b) No person who is privy to such information may make any recommendation to any other person as to dealing in the relevant securities.

(c) No such dealings may take place in securities of the offeror except where the proposed offer is not price-sensitive in relation to such securities.

#### **4.2 RESTRICTION ON DEALINGS BY THE OFFEROR AND CONCERT PARTIES**

(a) During an offer period, the offeror and persons acting in concert with it must not sell any securities in the offeree company except with the prior consent of the Panel and following 24 hours public notice that such sales might be made. The Panel will not give consent for sales where a mandatory offer under Rule 9 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it may acquire an interest in any securities of the offeree company and only in exceptional circumstances will the Panel permit the offer to be revised. The Panel should be consulted whenever the offeror or a person acting in concert with it proposes to enter into or close out any type of transaction which may result in securities in the offeree company being sold during the offer period either by that party or by the counterparty to the transaction.

(b) During an offer period, the offeror and persons acting in concert with it must not acquire an interest in any securities of the offeree company through any anonymous order book system, or through any other means, unless, in either case, it can be established that the seller, or other party to the transaction in question, is not an exempt principal trader connected with the offeror.

**RULE 4 CONTINUED**

**In the case of dealings through an inter-dealer broker or other similar intermediary, “seller” includes the person who has transferred the securities to the intermediary as well as the intermediary itself. (See also Rule 38.2.)**

**NOTES ON RULES 4.1 and 4.2****1. Other circumstances in which dealings may not take place**

*An offeror or other persons may also be restricted from dealing or procuring others to deal in certain other circumstances, eg before the announcement of an offer, if the offeror has been supplied by the offeree company with confidential price-sensitive information in the course of offer discussions.*

**2. Consortium offers and joint offerors**

*If an offer is to be made by more than one offeror or by a company formed by a group of persons to make an offer or by any other consortium offer vehicle, the offerors or group involved will normally be considered to be in a consortium for the purpose of this Note.*

*The Panel must be consulted before any acquisitions of interests in offeree company securities are made by members or potential members of a consortium. If there are existing interests in such securities, it will be necessary to satisfy the Panel that they were acquired before the consortium was formed or contemplated.*

*It will not normally be acceptable for members of a consortium to acquire interests in offeree company securities unless there are, for example, when a consortium company is to be the offeror, appropriate arrangements to ensure that such acquisitions are made proportionate to members' interests in the consortium company or under arrangements which give no profit to the party making the acquisition. The Panel will also be concerned to ensure that the purposes of the Code are not avoided through characterising persons acting in concert as joint offerors.*

**3. No-profit arrangements**

*Arrangements made by a potential offeror with a person acting in concert with it, whereby interests in offeree company securities are acquired by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Panel must be consulted.*

**RULE 4 CONTINUED****NOTES ON RULES 4.1 and 4.2 continued****4. When an offer will not be made**

*If, after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, the discussions are terminated or the offeror decides not to make an offer, no dealings in securities of the offeree company or, where relevant, the offeror, by the offeror or by any person privy to this information may take place prior to an announcement of the position.*

**5. No dealing contrary to published advice**

*Directors and financial advisers to a company who have interests in securities in that company must not deal in such securities contrary to any advice they have published, or to any advice with which it can reasonably be assumed that they were associated, without giving sufficient public notice of their intentions together with an appropriate explanation.*

**6. Discretionary fund managers and principal traders**

*Dealings in securities of the offeree company by non-exempt discretionary fund managers and principal traders which are connected with the offeror will be treated in accordance with Rule 7.2.*

**4.3 GATHERING OF IRREVOCABLE COMMITMENTS**

**Any person proposing to contact a private individual or small corporate shareholder with a view to seeking an irrevocable commitment must consult the Panel in advance.**

**NOTE ON RULE 4.3*****Irrevocable commitments***

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

**4.4 DEALINGS IN OFFEREE SECURITIES BY CERTAIN OFFEREE COMPANY CONCERT PARTIES**

**During the offer period, except for exempt principal traders and exempt fund managers, no financial adviser or corporate broker (or any person controlling, controlled by or under the same control# as any such adviser or corporate broker) to an offeree company (or any of its parents,**

#See Note at end of Definitions Section.

**RULE 4 CONTINUED**

subsidiaries or fellow subsidiaries, or their associated companies or companies of which such companies are associated companies) shall, except with the consent of the Panel:

- (i) either for its own account or on behalf of discretionary clients acquire any interest in offeree company shares; or
- (ii) make any loan to a person to assist him in acquiring any such interest save for lending in the ordinary course of business and on normal commercial terms to persons with which they have an established customer relationship; or
- (iii) enter into any indemnity or option arrangement or any arrangement, agreement or understanding, formal or informal, of whatever nature, which may be an inducement for a person to retain, deal or refrain from dealing in relevant securities of the offeree company.

**NOTE ON RULE 4.4*****Irrevocable commitments and letters of intent***

*Rule 4.4(iii) does not prevent an adviser to an offeree company from procuring irrevocable commitments or letters of intent not to accept an offer.*

**4.5 RESTRICTION ON THE OFFEREE COMPANY ACCEPTING AN OFFER IN RESPECT OF TREASURY SHARES\***

An offeree company may not accept an offer in respect of treasury shares until after the offer is unconditional as to acceptances.

**4.6 SECURITIES BORROWING AND LENDING TRANSACTIONS BY OFFERORS, THE OFFEREE COMPANY AND THEIR CONCERT PARTIES**

- (a) During an offer period, the following persons must not, except with the consent of the Panel, enter into or take action to unwind a securities borrowing or lending transaction in respect of relevant securities of the offeree company:
  - (i) an offeror;
  - (ii) the offeree company; and
  - (iii) any person acting in concert with an offeror or with the offeree company.

*\*This Rule is disapplied in a scheme.*

**RULE 4 CONTINUED**

**(b) During an offer period, where a person subject to Rule 4.6(a) enters into or takes action to unwind a securities borrowing or lending transaction in respect of relevant securities of a securities exchange offeror or, with the consent of the Panel, the offeree company, the transaction must be disclosed as if it were a dealing in those relevant securities (see Note 5(l) on Rule 8).**

**NOTES ON RULE 4.6****1. Return of borrowed relevant securities**

*The redelivery by a borrower of relevant securities (or equivalent securities) which have been recalled, or the accepting by a lender of the redelivery of relevant securities (or equivalent securities) which have not been recalled, in each case in accordance with an existing securities borrowing or lending agreement, will not normally be treated as taking action to unwind a securities borrowing or lending transaction. However, the Panel will normally require the redelivery or the accepting of the redelivery of such relevant securities to be disclosed as if it were a dealing in those relevant securities.*

**2. Notice in lieu of disclosure**

*Where a person subject to Rule 4.6 wishes to enter into or take action to unwind more than one lending transaction in respect of relevant securities of a securities exchange offeror or, with the consent of the Panel, the offeree company, the Panel may instead require that person to give public notice that he might do so.*

**3. Discretionary fund managers and principal traders**

*Securities borrowing or lending transactions by non-exempt discretionary fund managers and principal traders will be treated in accordance with Rule 7.2.*

**4. Financial collateral arrangements**

*If, during an offer period, a person subject to Rule 4.6 enters into, or takes action to unwind, a security financial collateral arrangement which provides a right for the collateral-taker to use and dispose of relevant securities of the offeree company as if it were the owner of those relevant securities (a "right of use"), or enters into, or takes action to unwind, a title transfer collateral arrangement in respect of relevant securities of the offeree company, this will be treated in the same way as entering into or taking action to unwind a securities lending transaction. A person subject to Rule 4.6 should not therefore enter into such an arrangement, except with the consent of the Panel. If a person subject to Rule 4.6 has an existing financial collateral arrangement in relation to relevant securities of the offeree company at the commencement of the offer period, the Panel should be consulted.*

**RULE 4 CONTINUED****NOTES ON RULE 4.6 continued**

*If, during an offer period, a person subject to Rule 4.6 grants a right of use, or enters into or takes action to unwind a title transfer collateral arrangement, in respect of relevant securities of a securities exchange offeror or, with the consent of the Panel, the offeree company, the transaction must be disclosed as if it were a dealing in relevant securities (see Note 5(l) on Rule 8).*

## **RULE 5. TIMING RESTRICTIONS ON ACQUISITIONS**

*NB For the purposes of this Rule 5 only, the number of shares in which a person will be treated as having an interest includes any shares in respect of which he has received an irrevocable commitment (see paragraph (5) of the definition of interests in securities).*

### **5.1 RESTRICTIONS**

**Except as permitted by Rule 5.2:**

**(a) when a person (which for the purpose of Rule 5 includes any persons acting in concert with him) is interested in shares which in the aggregate carry less than 30% of the voting rights of a company, he may not acquire an interest in any other shares carrying voting rights in that company which, when aggregated with the shares in which he is already interested, would carry 30% or more of the voting rights; and**

**(b) when a person is interested in shares which in the aggregate carry 30% or more of the voting rights of a company but does not hold shares which carry more than 50% of the voting rights, he may not acquire an interest in any other shares carrying voting rights in that company. See Note 5.**

#### **NOTES ON RULE 5.1**

##### **1. When more than 50% is held**

*This Rule is not relevant to a person who holds shares carrying more than 50% of the voting rights of a company or to a person who obtains such a position by a permitted acquisition.*

##### **2. New shares, subscription rights, convertibles and options**

*Neither the acquisition of new shares, securities convertible into new shares or rights to subscribe for new shares (other than the purchase of rights arising pursuant to a rights issue) nor the acquisition of new or existing shares, or rights in relation to such shares, under a share option scheme is restricted by this Rule. However, the acquisition of new shares as a result of the exercise of conversion or subscription rights or options must be treated for the purpose of this Rule as if it were an acquisition from a single shareholder (see Rule 5.2(a)). The effective date of the acquisition should normally be taken as the date of exercise of conversion or subscription rights or of options.*

*(See also Note 3 on this Rule.)*

##### **3. Allotted but unissued shares**

*When shares of a company carrying voting rights have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Panel should be consulted. This Rule may apply to the acquisition of an interest in such shares as it would in the case of an acquisition of an interest in registered shares.*

**RULE 5 CONTINUED****NOTES ON RULE 5.1 continued****4. “Whitewashes”**

*This Rule does not prohibit a person from obtaining an interest in shares carrying 30% or more of the voting rights in accordance with Note 1 of the Notes on Dispensations from Rule 9.*

**5. Maintenance of the percentage of the shares in which a person is interested**

*The restrictions in this Rule do not apply to an acquisition of an interest in shares which would not increase the percentage of the shares carrying voting rights in which that person is interested, eg if a shareholder takes up his entitlement under a fully underwritten rights issue or if a person acquires shares on exercise of a call option.*

**6. Discretionary fund managers and principal traders**

*Dealings by non-exempt discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 7.2.*

**7. Gifts**

*If a person receives a gift of shares or an interest in shares which takes the aggregate number of shares carrying voting rights in which he is interested to 30% or more, he must consult the Panel. (See also Note 3 on Rule 9.5.)*

**5.2 EXCEPTIONS TO RESTRICTIONS**

The restrictions in Rule 5.1 do not apply to an acquisition of an interest in shares carrying voting rights in a company by a person:

(a) at any time from a single shareholder if it is the only such acquisition within any period of 7 days (see also Rules 5.3 and 5.4). This exception will not apply when the person has announced a firm intention to make an offer and there is no pre-condition to which the making of an offer is subject; or

(b) immediately before the person announces a firm intention to make an offer (whether or not there is any pre-condition to which the making of an offer is subject), provided that the offer will be publicly recommended by, or the acquisition is made with the agreement of, the board of the offeree company and the acquisition is conditional upon the announcement of the offer; or

(c) after the person has announced a firm intention to make an offer provided that, at the time of the acquisition, there is no pre-condition to which the making of an offer is subject and:

(i) the acquisition is made with the agreement of the board of the offeree company; or

**RULE 5 CONTINUED**

- (ii) that offer or any competing offer has been publicly recommended by the board of the offeree company, even if such recommendation is subsequently withdrawn; or
  - (iii) the first closing date of that offer or of any competing offer has passed; or
  - (iv) that offer is unconditional in all respects; or
- (d) if the acquisition is by way of acceptance of the offer; or
- (e) if the acquisition is permitted by Note 11 on Rule 9.1 or Note 5 of the Notes on Dispensations from Rule 9.

**NOTES ON RULE 5.2****1. Single shareholder**

(a) *For the purpose of Rule 5.2(a), a number of shareholders will be regarded as a single shareholder only if they are all members of the same family or of a group of companies which is regarded as one for disclosure purposes under Section 823 of the Companies Act 2006. A principal trader or a fund manager managing investment accounts on behalf of a number of underlying clients (whether or not on a discretionary basis) will not normally be considered to be a single shareholder for the purpose of this Rule. The Panel should be consulted in cases of doubt.*

(b) *An acquisition of an interest in shares will only be permitted by Rule 5.2(a) if the acquisition relates to a pre-existing holding of shares of the single shareholder concerned.*

**2. Rule 9**

*An acquisition permitted by Rule 5.2 may result in an obligation to make an offer under Rule 9, in which case an immediate announcement of such an offer must be made.*

**3. Revision**

*If an offeror revises its offer, the exceptions allowed by this Rule will apply on the basis of the time periods applicable to the original offer.*

**4. After an offer lapses**

*After an offer has lapsed, the restrictions in Rule 5.1 will once again apply to the former offeror.*

**RULE 5 CONTINUED****5.3 ACQUISITIONS FROM A SINGLE SHAREHOLDER – CONSEQUENCES**

A person who acquires an interest in shares from a single shareholder permitted by Rule 5.2(a) may not acquire an interest in any other shares carrying voting rights in a company, except in the circumstances set out in Rule 5.2(b), (c), (d) and (e). If that person makes an offer for the company which subsequently lapses, this restriction will cease to apply.

**NOTES ON RULE 5.3****1. If a person's interests are reduced**

*A person who is restricted by this Rule from making further acquisitions will cease to be so restricted if the aggregate number of shares carrying voting rights in which he is interested falls below 30% (in which case he will become subject to Rule 5.1(a)).*

**2. Rights or scrip issues and “whitewashes”**

*The restrictions imposed by this Rule do not prevent a person from receiving his entitlement of shares through a rights or scrip issue as long as he does not increase the percentage of shares carrying voting rights in which he is interested. Nor do they prevent a person from acquiring further interests in shares in accordance with the Notes on Dispensations from Rule 9.*

**5.4 ACQUISITIONS FROM A SINGLE SHAREHOLDER – DISCLOSURE**

A person who acquires an interest in shares carrying voting rights in a company from a single shareholder permitted by Rule 5.2(a) must notify the company, a RIS and the Panel, not later than 12 noon on the business day following the date of the acquisition, of details of:

- (a) that acquisition; and
- (b) any shares of the company in which he has an interest or in respect of which he 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 position (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be disclosed.

**NOTE ON RULE 5.4*****Disclosure of the identity of the person dealing***

*Any announcement must comply with the requirements of Note 5 on Rule 8 regarding the disclosure of the identity of the person dealing and, if different, the owner or controller.*

## **RULE 6. ACQUISITIONS RESULTING IN AN OBLIGATION TO OFFER A MINIMUM LEVEL OF CONSIDERATION**

### **6.1 ACQUISITIONS BEFORE A FIRM OFFER ANNOUNCEMENT**

Except with the consent of the Panel in cases falling under (a) or (b), when an offeror or any person acting in concert with it has acquired an interest in shares in the offeree company:

(a) within the three month period prior to the commencement of the offer period; or

(b) during the period, if any, between the commencement of the offer period and an announcement made by the offeror in accordance with Rule 2.7; or

(c) prior to the three month period referred to in (a), if in the view of the Panel there are circumstances which render such a course necessary in order to give effect to General Principle 1,

the offer to the holders of shares of the same class shall not be on less favourable terms.

If an acquisition of an interest in shares in the offeree company has given rise to an obligation under Rule 11, compliance with that Rule will normally be regarded as satisfying any obligation under this Rule in respect of that acquisition.

In the case of paragraph (b), an immediate announcement may be required in accordance with the Note on Rule 7.1.

### **6.2 ACQUISITIONS AFTER A FIRM OFFER ANNOUNCEMENT**

(a) If, after an announcement made in accordance with Rule 2.7 and before the offer closes for acceptance, an offeror or any person acting in concert with it acquires any interest in shares at above the offer price (being the then current value of the offer), it shall increase its offer to not less than the highest price paid for the interest in shares so acquired.

(b) Immediately after the acquisition, the offeror must announce that a revised offer will be made in accordance with this Rule (see also Rule 32). Whenever practicable, the announcement should also state the nature of the interest, the number of shares concerned and the price paid.

(c) Acquisitions of interests in shares in the offeree company may also give rise to an obligation under Rule 11. Where an obligation is incurred under Rule 11 by reason of any such acquisition, compliance with that Rule will normally be regarded as satisfying any obligation under this Rule in respect of that acquisition.

**RULE 6 CONTINUED****NOTES ON RULE 6****1. Adjusted terms**

*The Panel's discretion to agree adjusted terms pursuant to Rule 6.1(a) or (b) will only be exercised in exceptional circumstances. Factors which the Panel might take into account when considering an application for adjusted terms include:*

- (a) whether the relevant acquisition was made on terms then prevailing in the market;*
- (b) changes in the market price of the shares since the relevant acquisition;*
- (c) the size and timing of the relevant acquisition;*
- (d) the attitude of the offeree board;*
- (e) whether interests in shares have been acquired at high prices from directors or other persons closely connected with the offeror or the offeree company; and*
- (f) whether a competing offer has been announced for the offeree company.*

**2. Acquisitions prior to the three month period**

*The discretion given to the Panel in Rule 6.1(c) will not normally be exercised unless the vendors, or other parties to the transactions giving rise to the interests, are directors of, or other persons closely connected with, the offeror or the offeree company.*

**3. No less favourable terms**

*For the purpose of Rule 6.1, except where Rule 9 (mandatory offer) or Rule 11.1 (requirement for cash offer) applies, it will not be necessary to make a cash offer available even if interests in shares have been acquired for cash. However, any securities offered as consideration must, at the date of the announcement of the firm intention to make the offer, have a value at least equal to the highest relevant price paid. If, during the period ending when the market closes on the first business day after the announcement, 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 of an offeror, 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.*

**RULE 6 CONTINUED****NOTES ON RULE 6 continued****4. Highest price paid**

*For the purpose of this Rule, the price paid for any acquisition of an interest in shares will be determined as follows:*

*(a) in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, his broker acting in an agency capacity) and the vendor (or principal trader) is struck;*

*(b) in the case of a call option which remains unexercised, the price paid will normally be treated as the middle market price of the shares which are the subject of the option at the time the option is entered into;*

*(c) in the case of a call option which has been exercised, the price paid will normally be treated as the amount paid on exercise of the option together with any amount paid by the option-holder on entering into the option;*

*(d) in the case of a written put option (whether exercised or not), the price paid will normally be treated as the amount paid or payable on exercise of the option less any amount paid by the option-holder on entering into the option; and*

*(e) in the case of a derivative, the price paid will normally be treated as the initial reference price together with any fee paid on entering into the derivative.*

*In the case of an option or a derivative, however, if the option exercise price or derivative reference price is calculated by reference to the average price of a number of acquisitions by the counterparty of interests in underlying securities, the price paid will normally be determined to be the highest price at which such acquisitions are actually made.*

*Any stamp duty and broker's commission payable should be excluded.*

*The Panel should be consulted in advance if it is proposed to acquire the voting rights attaching to shares, or general control of them.*

*Where a person acquired an interest in shares more than three months prior to the commencement of the offer period as a result of any option, derivative or agreement to purchase and, within the three month period prior to the commencement of the offer period or after the announcement made in accordance with Rule 2.7 and before the offer closes for acceptance, the person acquires any of the relevant shares, no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, if the terms of the instrument have been varied in any way, or if the shares are acquired other than on the terms of the original instrument, the Panel should be consulted.*

**RULE 6 CONTINUED****NOTES ON RULE 6 continued****5. Cum dividend**

*When accepting shareholders are entitled under the offer to retain a dividend declared or forecast by the offeree company but not yet paid, purchases in the market or otherwise by an offeror or any person acting in concert with it may be made at prices up to the net cum dividend equivalent of the offer value without necessitating any revision of the offer. Where the offeror or any person acting in concert with it proposes to acquire an interest in shares in reliance on this Note other than by purchasing shares, the Panel should be consulted.*

**6. Convertible securities, warrants and options**

*Acquisitions of securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares will normally only be relevant to this Rule if they are converted or exercised (as applicable). Such acquisitions will then be treated as if they were acquisitions of the underlying shares at a price calculated by reference to the acquisition price and the relevant conversion or exercise terms. In any case of doubt, the Panel should be consulted.*

**7. Unlisted securities**

*An offer where the consideration consists of securities for which immediate admission to trading on a regulated market in the United Kingdom is not to be sought will not normally be regarded as satisfying any obligation incurred under this Rule. In such cases the Panel should be consulted.*

**8. Discretionary fund managers and principal traders**

*Dealings by non-exempt discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 7.2.*

**9. Offer period**

*References to the offer period in this Rule are to the time during which the offeree company is in an offer period, irrespective of whether the offeror was contemplating an offer when the offer period commenced.*

**10. Competition reference period**

*When, under Rule 12.2(b)(ii), a new offer period begins at the time the competition reference period ends, the three month period referred to in Rule 6.1(a) will be deemed to be the competition reference period.*

## **RULE 7. CONSEQUENCES OF CERTAIN DEALINGS**

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

The acquisition of an interest in offeree company shares by an offeror or any person acting in concert with it may give rise to an obligation under Rule 6 (minimum level of consideration), Rule 9 (mandatory offer) or Rule 11 (nature of consideration to be offered). Immediately after such an acquisition, an appropriate announcement must be made by the offeror. Whenever practicable, the announcement should also state the nature of the interest, the number of shares concerned and the price paid.

#### **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).*

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

*NB Rule 7.2 and the Notes thereon address the position of connected fund managers and principal traders who either do not have exempt status or whose exempt status is not relevant by virtue of the operation of Note 2 on the definitions of exempt fund manager and exempt principal trader.*

- (a) Discretionary fund managers and principal traders who, in either case, are connected with an offeror or potential offeror, will not normally be presumed to be acting in concert with that person until its identity as an offeror or potential offeror is publicly announced or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected. Rules 5, 6, 9, 11 and 36 will then be relevant to acquisitions of interests in offeree company securities and Rule 4.2 to sales of offeree company securities by such persons. Rule 4.6 will be relevant to securities borrowing and lending transactions.**

**RULE 7 CONTINUED**

(b) Similarly, discretionary fund managers and principal traders who, in either case, are connected with the offeree company, will not normally be presumed to be acting in concert with the offeree company until the commencement of the offer period or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company and that it was connected with the offeree company. Rules 4.4, 5 and 9 may then be relevant to acquisitions of interests in offeree company securities. Rule 4.6 will be relevant to securities borrowing and lending transactions.

(See also the definition of connected fund managers and principal traders.)

(c) An exempt fund manager or exempt principal trader which is connected for the sole reason that it is controlled# by, controls or is under the same control as a connected adviser will not be presumed to be in concert even after the commencement of the offer period or the identity of the offeror being publicly announced (as the case may be). (See Note 2 on the definitions of exempt fund manager and exempt principal trader.)

**NOTES ON RULE 7.2****1. Dealings prior to a concert party relationship arising**

(a) As a result of Rule 7.2(a) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with an offeror or potential offeror will not normally be relevant for the purposes of Rules 4.2, 4.6, 5, 6, 9, 11 and 36 before the identity of the offeror or potential offeror has been publicly announced or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected.

(b) Similarly, as a result of Rule 7.2(b) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with the offeree company will not normally be relevant for the purposes of Rules 5 or 9 before the commencement of the offer period or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company.

(c) Rule 9 will, however, be relevant if the aggregate number of shares in which any person and all persons controlling#, controlled by or under the same control as that person (including any exempt fund manager or exempt principal trader) are interested carry 30% or more of the voting rights of a company. However, provided that recognised intermediary status has not fallen away (see

#See Note at end of Definitions Section.

**RULE 7 CONTINUED****NOTES ON RULE 7.2 continued**

*Note 3 on the definition of recognised intermediary), a recognised intermediary acting in a client-serving capacity will not be treated as interested in (or as having acquired an interest in) any securities by virtue only of paragraph (3) or paragraph (4) of the definition of interests in securities (other than those held in a proprietary capacity) for these purposes.*

*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 interests in 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.*

**2. Qualifications**

*(a) If a connected discretionary fund manager or principal trader is in fact acting in concert with an offeror or with the offeree company, the usual concert party consequences will apply irrespective of whether the offeree company is in an offer period or the identity of the offeror or potential offeror has been publicly announced.*

*(b) If an offeror or potential offeror, or any company in its group, has funds managed on a discretionary basis by an exempt fund manager, Rule 7.2 may be relevant. If, for example, any securities of the offeree company are managed by such exempt fund manager for the offeror or potential offeror, the exception in Rule 7.2(c) in relation to exempt fund managers may not apply in respect of those securities. The Panel should be consulted in such cases.*

**3. Dealings by principal traders**

*After a principal trader is presumed to be acting in concert by virtue of Rules 7.2(a) or (b), it may stand down from its dealing activities. In such circumstances, with the prior consent of the Panel, the principal trader may reduce its interest in offeree company securities or offeror securities, or may acquire interests in such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rules 4.2, 4.4, 5, 6, 9, 11 and 36, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a) and (b). The Panel will also normally, pursuant to Rule 4.6, consent to connected principal traders taking action to unwind a securities borrowing or lending transaction in respect of relevant securities of the offeree company in such circumstances. The Panel will not*

**RULE 7 CONTINUED****NOTES ON RULE 7.2 continued**

normally require such dealings to be disclosed under Rules 4.6, 8.4, 24.4 or 25.4. Any such dealings must take place within a time period agreed in advance by the Panel.

**4. Dealings by discretionary fund managers**

(a) After a discretionary fund manager is presumed to be acting in concert with an offeror or potential offeror by virtue of Rule 7.2(a), any acquisition by it of any interest in offeree company securities will normally be relevant for Rules 5, 6, 9, 11 and 36. Similarly, any acquisition of any interest in offeree company securities by a discretionary fund manager after it is presumed to be acting in concert by virtue of Rule 7.2(b) will not normally be permitted by virtue of Rule 4.4(i). However, with the prior consent of the Panel, a discretionary fund manager connected with either the offeree company or an offeror or potential offeror will normally be permitted to acquire an interest in offeree company securities, with a view to reducing any short position, without such acquisitions being relevant for the purposes of Rules 4.4(i), 5, 6, 9, 11 and 36, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a) and (b). The Panel will also normally, pursuant to Rule 4.6, consent to connected discretionary fund managers taking action to unwind securities borrowing transactions in respect of relevant securities of the offeree company in such circumstances. Any such acquisitions or unwinding arrangements must take place within a time period agreed in advance by the Panel and should be disclosed pursuant to Rule 8.4, Rule 4.6 or Note 2 on Rule 4.6, as appropriate.

(b) After the commencement of the offer period, with the prior consent of the Panel, a discretionary fund manager connected with an offeror will normally be permitted to sell offeree company securities without such sales being relevant for the purposes of Rule 4.2, notwithstanding the usual application of the presumptions of acting in concert and Rule 7.2(a). Any such sale should be disclosed under Rule 8.4.

**5. Rule 9**

The Panel should be consulted if, once the identity of the offeror or potential offeror is publicly known, it becomes apparent that the number of shares in which the offeror or potential offeror and persons acting in concert with it, including any connected discretionary fund managers and principal traders to which Rule 7.2(a) applies, are interested carry in aggregate 30% or more of the voting rights of the offeree company.

**RULE 7 CONTINUED****NOTES ON RULE 7.2 continued****6. Disclosure of dealings in offer documentation**

*Interests in relevant securities and dealings (whether before or after the presumptions in Rules 7.2(a) and (b) apply) by connected discretionary fund managers and principal traders (unless exempt) must be disclosed in any offer document in accordance with Rule 24.4 and in any offeree board circular in accordance with Rule 25.4, as the case may be. This will not apply in respect of a dealing that has been permitted by Note 3 above and has not been required to be disclosed.*

**7. Consortium offers**

*See also Note 6 on the definition of acting in concert where the connected fund manager or principal trader is part of the same organisation as an investor in a consortium.*

**7.3 PARTIAL OFFERS AND “WHITEWASHES”**

**The acquisition of an interest in offeree company shares by an offeror or any person acting in concert with it may result in the Panel refusing to exercise its discretion to permit a partial offer or to grant a dispensation under Note 1 of the Notes on Dispensations from Rule 9.**

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

*Rule 8 requires various persons, during an offer period, to make public disclosures, or in certain cases private disclosures to the Panel only, of their positions or dealings in relevant securities of the parties to the offer. Disclosures are not required to be made in respect of positions or dealings in relevant securities of a cash offeror.*

*An Opening Position Disclosure is an announcement containing details of interests or short positions in, or rights to subscribe for, any relevant securities of a party to the offer if the person concerned has such a position. An Opening Position Disclosure is required to be made after the commencement of the offer period and, if later, after the announcement that first identifies an offeror and must be made by the offeree company, by an offeror (after its identity is first publicly disclosed) and by any person that is interested in 1% or more of any class of relevant securities of any party to the offer. Opening Position Disclosures must be made within 10 business days.*

*A Dealing Disclosure is required after the person concerned deals in relevant securities of any party to the offer. If a party to the offer or any person acting in concert with it deals in relevant securities of any party to the offer, it must make a Dealing Disclosure by no later than 12 noon on the business day following the date of the relevant dealing. If a person is, or becomes, interested in 1% or more of any class of relevant securities of any party to the offer, he must make a Dealing Disclosure if he deals in any relevant securities of any party to the offer (including by means of an option in respect of, or a derivative referenced to, relevant securities) by no later than 3.30 pm on the business day following the date of the dealing. Dealing Disclosures are required to contain details of the interests or short positions in, or rights to subscribe for, any relevant securities of the party to the offer in whose securities the person disclosing has dealt as well as the person's positions (if any) in the relevant securities of any other party to the offer, unless these have previously been published under Rule 8 (and have not changed).*

*Rule 8 also sets out the disclosure obligations of exempt principal traders and exempt fund managers, and of the parties to the offer and persons acting in concert with them when they deal for the account of non-discretionary clients.*

**RULE 8 CONTINUED****8.1 DISCLOSURE BY AN OFFEROR**

- (a) An offeror must make a public Opening Position Disclosure:
- (i) after the announcement that first identifies it as an offeror; and
  - (ii) after the announcement that first identifies a competing securities exchange offeror.
- (b) An offeror must also make a public Dealing Disclosure if it deals in any relevant securities of the offeree company or any securities exchange offeror during an offer period for its own account or for the account of discretionary investment clients.

(See also Note 12 below.)

**8.2 DISCLOSURE BY THE OFFEREE COMPANY**

- (a) An offeree company must make a public Opening Position Disclosure:
- (i) after the commencement of the offer period; and
  - (ii) if later, after the announcement that first identifies any securities exchange offeror.
- (b) An offeree company must also make a public Dealing Disclosure if it deals in any relevant securities of the offeree company or any securities exchange offeror during an offer period for its own account or for the account of discretionary investment clients.

**8.3 DISCLOSURE BY PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE**

- (a) Any person who at the relevant time (see Note 7(a) below) is interested (directly or indirectly) in 1% or more of any class of relevant securities of the offeree company or any securities exchange offeror must make a public Opening Position Disclosure:
- (i) after the commencement of an offer period; and
  - (ii) if later, after the announcement that first identifies any securities exchange offeror.
- (b) Any person who is (or as a result of any dealing becomes) interested (directly or indirectly) in 1% or more of any class of relevant securities of the offeree company or any securities exchange offeror must make a public Dealing Disclosure if he deals in any relevant securities of the offeree company or any securities exchange offeror during an offer period.
- (c) Where two or more persons act pursuant to an agreement or understanding, whether formal or informal, to acquire or control an interest in relevant securities, they will normally be deemed to be a single person for the purpose of this Rule 8.3. (See also Note 12(b) below.)

**RULE 8 CONTINUED**

(d) If a person manages investment accounts on a discretionary basis, he, and not the person on whose behalf the relevant securities (or interests in relevant securities) are managed, will be treated for the purpose of this Rule as interested in the relevant securities concerned. Except with the consent of the Panel, where more than one discretionary investment management operation is conducted in the same group, the interests in relevant securities of all such operations will be treated for the purpose of this Rule as those of a single person and must be aggregated (see Note 8 below).

(e) Rules 8.3(a) to (d) do not apply to recognised intermediaries acting in a client-serving capacity (see Note 9 below).

(f) A person making a disclosure in accordance with Rules 8.1, 8.2, 8.4 or 8.5 need not also disclose the same information pursuant to Rule 8.3.

**8.4 DISCLOSURE BY CONCERT PARTIES**

A person acting in concert with any party to an offer must make a public Dealing Disclosure if he deals in any relevant securities of the offeree company or any securities exchange offeror during an offer period for his own account or for the account of discretionary investment clients. (See also Note 12 below.)

**8.5 DISCLOSURE BY EXEMPT PRINCIPAL TRADERS**

(a) An exempt principal trader connected with an offeror which does not have recognised intermediary status or which does have recognised intermediary status but which holds any interest or short position in, or right to subscribe for, any relevant securities of the offeree company or any securities exchange offeror in a proprietary capacity must make a public Opening Position Disclosure:

- (i) after the announcement that first identifies the offeror with which it is connected as an offeror; and
- (ii) after the announcement that first identifies a competing securities exchange offeror.

(b) An exempt principal trader connected with the offeree company which does not have recognised intermediary status or which does have recognised intermediary status but which holds any interest or short position in, or right to subscribe for, any relevant securities of the offeree company or any securities exchange offeror in a proprietary capacity must make a public Opening Position Disclosure:

- (i) after the commencement of the offer period; and
- (ii) if later, after the announcement that first identifies any securities exchange offeror.

**RULE 8 CONTINUED**

(c) An exempt principal trader connected with a party to the offer must make a public Dealing Disclosure if it deals in any relevant securities of the offeree company or any securities exchange offeror during an offer period, stating the following details:

- (i) if the exempt principal trader does not have recognised intermediary status, or if it does but it is dealing in a proprietary capacity, the details required under Note 5(a) on Rule 8; and
- (ii) if the exempt principal trader has recognised intermediary status and is dealing in a client-serving capacity, the details required under Note 5(b) on Rule 8.

**8.6 DISCLOSURE BY EXEMPT FUND MANAGERS WITH NO INTERESTS IN SECURITIES OF ANY PARTY TO THE OFFER REPRESENTING 1% OR MORE DEALING FOR DISCRETIONARY CLIENTS**

(a) An exempt fund manager connected with a party to the offer must make a private Dealing Disclosure if it deals in any relevant securities of the offeree company or any securities exchange offeror for the benefit of discretionary investment clients during an offer period.

(b) Rule 8.6(a) does not apply if the exempt fund manager is also required to make a disclosure in accordance with Rule 8.3.

**8.7 DISCLOSURE OF NON-DISCRETIONARY DEALINGS BY PARTIES AND CONCERT PARTIES**

A party to the offer and any person acting in concert with it must make a private Dealing Disclosure if it deals in any relevant securities of the offeree company or any securities exchange offeror during an offer period for the account of non-discretionary investment clients (other than a non-discretionary client that is a party to the offer or any person acting in concert with it).

**RULE 8 CONTINUED****NOTES ON RULE 8****1. Cash offerors**

Shares or other securities of a cash offeror will not be treated as “relevant securities” for the purposes of Rule 8.

*Following an announcement by a cash offeror that its offer is being revised to become (or that its possible offer may be) a securities exchange offer, Opening Position Disclosures and Dealing Disclosures will be required in the same way as if the announcement had been the first to identify the offeror as a securities exchange offeror.*

**2. Timing of disclosure****(a) Disclosures by the parties to the offer**

(i) *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).*

*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 deadline in the previous paragraph, 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 deadline above.*

(ii) *A party to the offer must make a Dealing Disclosure (whether public or private) by no later than 12 noon on the business day following the date of the dealing.*

**(b) Disclosures by persons with interests in securities representing 1% or more**

(i) *Subject to the following paragraph, a person required to make an Opening Position Disclosure under Rule 8.3(a) must do so by no later than 3.30 pm 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 a person required to make an Opening Position Disclosure under Rule 8.3(a) deals in any relevant securities of the offeree company or any securities exchange offeror before midnight on the day before*

**RULE 8 CONTINUED****NOTES ON RULE 8 continued**

*the deadline in the previous paragraph, he must instead make a Dealing Disclosure under Rule 8.3(b) by no later than 3.30 pm on the business day following the date of the dealing. In such a case, it will not also be necessary to make a separate Opening Position Disclosure under Rule 8.3(a).*

*(ii) A person required to make a Dealing Disclosure under Rule 8.3(b) must do so by no later than 3.30 pm on the business day following the date of the dealing.*

**(c) Disclosures by concert parties**

*(i) A person acting in concert with a party to the offer does not need to make an Opening Position Disclosure itself. Instead, details of the person's positions should be included in the Opening Position Disclosure made by the party to the offer with which he is acting in concert (see Note 5(a)(vii) below).*

*(ii) A person acting in concert with a party to the offer must make a Dealing Disclosure, whether public (in the case of Rule 8.4) or private (in the case of Rule 8.7), by no later than 12 noon on the business day following the date of the dealing.*

**(d) Disclosures by exempt principal traders**

*(i) Subject to the following paragraph, an exempt principal trader required to make an Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b) must do so 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 exempt principal trader required to make an Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b) deals in any relevant securities of the offeree company or any securities exchange offeror before midnight on the day before the deadline in the previous paragraph, it must instead make a Dealing Disclosure under Rule 8.5(c) by no later than 12 noon on the next business day. In such a case, it will not also be necessary to make a separate Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b).*

*(ii) An exempt principal trader must make a Dealing Disclosure by no later than 12 noon on the business day following the date of the dealing.*

**RULE 8 CONTINUED****NOTES ON RULE 8 continued****(e) Disclosures by exempt fund managers with no interests in securities of any party to the offer representing 1% or more dealing for discretionary clients**

*A private Dealing Disclosure by an exempt fund manager subject to Rule 8.6(a) dealing for discretionary clients must be made by no later than 12 noon on the business day following the date of the dealing.*

**3. Method of disclosure****(a) Public disclosures**

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

**(b) Private disclosures**

*Private disclosures are to the Panel only and must be sent to the Panel in electronic form.*

**(c) Disclosure forms**

*Specimen disclosure forms are available on the Panel's website ([www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)) or may be obtained from the Panel. Disclosures should follow the format of those forms.*

**(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.*

**4. Disclosure in relation to more than one party****(a) Opening Position Disclosures**

*Subject to paragraphs (i) to (iii) below, when an Opening Position Disclosure is made, the details in Note 5 below must be disclosed in relation to the relevant securities of the offeree company and any securities exchange offeror at the same time.*

*However:*

- (i) no disclosure is required in respect of the relevant securities of any party to the offer if there are no positions to disclose;*

**RULE 8 CONTINUED****NOTES ON RULE 8 continued**

(ii) (except where the disclosure is an Opening Position Disclosure by an offeror or the offeree company) no disclosure is required in respect of positions in the relevant securities of a party to the offer if full details of positions in each class of that party's relevant securities have previously been publicly disclosed under Rule 8 (and have not changed). An Opening Position Disclosure by an offeror or the offeree company, though, must include the details in Note 5 in relation to the relevant securities of the offeree company and any securities exchange offeror, even if certain details have previously been disclosed by the offeror or offeree company or persons acting in concert with the offeror or the offeree company (as the case may be), in accordance with Rule 8; and

(iii) where a person is required to make an Opening Position Disclosure and, before the deadline for doing so in Note 2, there is a subsequent announcement that first identifies an offeror, the Opening Position Disclosure does not need to disclose details in respect of the relevant securities of that subsequently announced offeror. A separate Opening Position Disclosure must then be made in respect of the relevant securities of that offeror by the deadline established under Note 2 by reference to the subsequent announcement.

Where a person is disclosing details in respect of more than one party to the offer at the same time, he must use a separate disclosure form in respect of each such party.

**(b) Dealing Disclosures**

Subject to the following sentence, when a Dealing Disclosure is made the details in Note 5 below must be disclosed in relation to the relevant securities of the offeree company and any securities exchange offeror at the same time. However, no disclosure is required in respect of the relevant securities of a party if there are no dealings or positions to disclose or if full details of positions in each class of that party's relevant securities have previously been publicly disclosed under Rule 8 (and have not changed).

Where a person is disclosing details in respect of more than one party to the offer at the same time, he must use a separate disclosure form in respect of each such party.

The above paragraphs of this Note 4(b) do not apply to disclosures under Rule 8.7 where details only need to be given in relation to the party in whose relevant securities the dealing took place.

**RULE 8 CONTINUED****NOTES ON RULE 8 continued****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)**

Any public disclosure under Rule 8 (other than 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 and that person's status (eg offeror, person acting in concert with the offeror, etc.);
- (ii) details of any relevant securities of the offeree company or the offeror (as the case may be) in which the person making the disclosure has an interest or in respect of which he has a right to subscribe, in each case specifying the nature of the interests or rights concerned and the relevant percentages. 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 or any delivery obligation or right to require another person to purchase or take delivery, must also be disclosed;
- (iii) details of any dealing arrangements of a kind referred to in Note 11(b) on the definition of acting in concert to which the person making the disclosure is a party;
- (iv) if the disclosure is by an exempt fund manager or an exempt principal trader, the identity of the party to the offer with which the person disclosing is connected;
- (v) confirmation whether the person making the disclosure is on the same day disclosing, or has previously disclosed, details in respect of the relevant securities of any other party or parties to the offer under Rule 8; and
- (vi) if the disclosure is by a party to the offer or any person acting in concert with it, details of any securities borrowing and lending positions required by Note 5(l) below.

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

- (vii) similar details as in (ii) and (iii) above of any interests, short positions or rights to subscribe of any person acting in concert with that party to the offer, and of any dealing arrangements of a kind referred to in Note 11(b) on the definition of acting in concert to which any such person acting in concert with it is a party, together with (in each case) the identity of the persons concerned.

**RULE 8 CONTINUED****NOTES ON RULE 8 continued**

*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) above are those determined in accordance with Note 7(d) below.*

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

- (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);*
- (x) 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*
- (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.*

**(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).*

*#See Note at end of Definitions Section.*

**RULE 8 CONTINUED****NOTES ON RULE 8 continued****(c) Private disclosures by connected exempt fund managers with no interests in securities of any party to the offer representing 1% or more**

*A private Dealing Disclosure under Rule 8.6 must include the same details as a public Dealing Disclosure (see (a) above).*

**(d) Private disclosures of non-discretionary dealings by parties and concert parties**

*A private Dealing Disclosure made under Rule 8.7 must include:*

- (i) the identity of the person disclosing;*
- (ii) 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;*
- (iii) the total of the relevant securities in question in which the dealing took place;*
- (iv) 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); and*
- (v) the date of the dealing.*

**(e) Related dealings**

*When a person transacts two or more separate but related dealings executed at or around the same time (for example, the entering into of a derivative referenced to relevant securities and the acquisition of such securities for the purposes of hedging) or has two or more separate but related positions in relevant securities, any disclosure must include the required information in relation to each such dealing so executed or position held.*

**(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*

**RULE 8 CONTINUED****NOTES ON RULE 8 continued**

*managers of dealings on behalf of, or positions held for the account of, discretionary clients, the clients need not be named.*

**(g) Specially cum or ex dividend acquisitions**

*Where an offeror or any person acting in concert with it acquires any interest in offeree company securities on a specially cum or specially ex dividend basis, details of that fact should also be disclosed.*

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

*Percentages should be calculated by reference to the numbers of relevant securities given in a party's latest announcement required by Rule 2.10. In the case of a disclosure relating to a right to subscribe, or subscription, for new securities, the Panel should be consulted regarding the appropriate number of relevant securities to be used in calculating the relevant percentage.*

**(i) Options, derivatives etc.**

*In the case of agreements to purchase or sell, rights to subscribe, options or derivatives, full details should be given so that the nature of the interest, position or dealing can be fully understood. For options this should include, at least, a description of the options concerned, the number of securities under option, the exercise period (or in the case of exercise, the exercise date), the exercise price and any option money paid or received. For derivatives this should include, at least, a description of the derivatives concerned, the number of reference securities to which they relate (when relevant), the maturity date (or if applicable the closing out date) and the reference price (and any fee payable on entering into the derivative).*

*In addition, if there exists any agreement, arrangement or understanding, formal or informal, between the person disclosing and any other person relating to the voting rights of any relevant securities under option or relating to the voting rights or future acquisition or disposal of any relevant securities to which a derivative is referenced (as the case may be), full details of such agreement, arrangement or understanding, identifying the relevant securities in question, must be included in the disclosure. If there are no such agreements, arrangements or understandings, this fact should be stated. Where such an agreement, arrangement or understanding is entered into at a later date than the derivative or option to which it relates, it will be regarded as a dealing in relevant securities.*

**(j) Futures contracts and covered warrants**

*For the purpose of any disclosure, a futures contract or covered warrant for which exercise includes the possibility of delivery of the underlying securities is treated as an option. A futures contract or covered warrant which does not*

**RULE 8 CONTINUED****NOTES ON RULE 8 continued**

*include the possibility of delivery of the underlying securities is treated as a derivative.*

**(k) Transfers in and out**

*If, following a public disclosure made under Rule 8, interests in relevant securities are transferred into or out of a person's management, a reference to the transfer must be included in the next public disclosure made by that person under Rule 8.*

**(l) Securities borrowing and lending**

*An Opening Position Disclosure by a party to the offer must include details of any relevant securities of the offeree company and any securities exchange offeror which the party making the disclosure 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. In addition, a Dealing Disclosure by a party to the offer or any person acting in concert with a party to the offer must include details of any relevant securities of the offeree company and any securities exchange offeror which the person making the disclosure has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold.*

*Where a party to the offer or any person acting in concert with it enters into, or takes action to unwind, a securities borrowing or lending transaction in respect of relevant securities of an offeror or, with the Panel's consent under Rule 4.6(a), the offeree company, a Dealing Disclosure must be made by that person.*

*The provisions of this Note also apply in respect of any financial collateral arrangements of the kind referred to in Note 4 on Rule 4.6 entered into or unwound by a party to the offer or any person acting in concert with it as if such arrangements were securities lending transactions.*

*In all cases referred to above, all relevant details should be given and the disclosure must be made in a form agreed by the Panel.*

**6. Indemnity and other dealing arrangements**

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

*(b) Where the offeree company has entered into such a dealing arrangement before the start of the offer period or an offeror has entered into such a*

**RULE 8 CONTINUED****NOTES ON RULE 8 continued**

*dealing arrangement before the announcement that first identifies it as an offeror, details of the arrangement must be included in the announcement that commences the offer period or the announcement that first identifies the offeror (as the case may be).*

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

*(d) Details of dealing arrangements must also be included in Opening Position Disclosures and Dealing Disclosures as required by Note 5 above.*

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

*(a) Under Rule 8.3(a), an Opening Position Disclosure is required if the person is interested in 1% or more of any class of relevant securities of the offeree company or any securities exchange offeror at the time of the announcement that commences the offer period or the time of the announcement that first identifies an offeror (as the case may be).*

*(b) Under Rule 8.3(b), a Dealing Disclosure is required if the person dealing is interested in 1% or more of any class of relevant securities of the offeree company or any securities exchange offeror at midnight on the date of the dealing or was so interested at midnight on the previous business day.*

*(c) A person will be treated as interested in relevant securities for the purposes of this Note 7, and Rule 8 generally, if he has disposed of an interest in relevant securities before midnight on the date in question but there exists an agreement, arrangement or understanding, formal or informal, of any nature (but not itself amounting to an interest in the securities) as a result of which he is entitled, or would expect to be able, to acquire an interest in the securities concerned (or equivalent securities) thereafter.*

*(d) The interests, short positions, rights to subscribe, dealing arrangements and securities borrowing and lending positions to be disclosed under paragraphs (ii), (iii), (vi) and (vii) 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).*

**RULE 8 CONTINUED****NOTES ON RULE 8 continued****8. Discretionary fund managers**

*The principle normally applied by the Panel is that where the investment decision is made by a discretionary fund manager, he, and not the person on whose behalf the fund is managed, will be treated as interested in (or having a short position in or right to subscribe for), or having dealt in, the relevant securities concerned. For that reason, Rule 8.3(d) requires a discretionary fund manager to aggregate the investment accounts which he manages for the purpose of determining whether he has an obligation to disclose. The beneficial owner would not normally, therefore, be concerned with disclosure to the extent that his investment is managed on a discretionary basis. However, where any of the funds managed on behalf of a beneficial owner are not managed by the fund manager originally contracted to do so but are managed by a different independent third party who has discretion regarding dealing, voting and offer acceptance decisions, the fund manager to whom the management of the funds has been sub-contracted (and not the originally contracted fund manager) is required to aggregate those funds and to comply with the relevant disclosure obligations accordingly.*

*This approach assumes that the discretionary fund manager does not take instructions from the beneficial owner (or, in the case of sub-contracted funds, from the originally contracted manager or the beneficial owner) on the positions or dealings in question and that fund management arrangements are not established or used to avoid disclosure.*

**9. Recognised intermediaries**

*(a) The exceptions in this Rule in relation to recognised intermediaries must not be used to avoid or delay disclosures. For example, a dealing in relevant securities by a recognised intermediary, backed by a firm commitment by a person to purchase the relevant securities from the recognised intermediary, will be regarded as a dealing by that person. A commitment may effectively be firm even if not legally binding, for example because of market practice. Such arrangements, therefore, should not be entered into unless appropriate disclosures are to be made. In addition, if such an arrangement is entered into with an offeror or a person acting in concert with the offeror, it might mean that the recognised intermediary is acting in concert with the offeror and normal concert party consequences might follow (such as the application of Rules 4, 5, 6, 7, 9, 11 and 24 and disclosure of dealings by the recognised intermediary under Rule 8.4).*

*(b) Where a desk with recognised intermediary status deals, or has any interest or short position in, or right to subscribe for, relevant securities in a proprietary capacity, it should aggregate the interests, short positions and rights to subscribe which it holds in a proprietary capacity with those of the rest of the group. However, in making such disclosures, it need not aggregate and*

**RULE 8 CONTINUED****NOTES ON RULE 8 continued**

*disclose details of any interests, short positions or rights to subscribe which it holds in a client-serving capacity. Where a desk with recognised intermediary status re-books a position which was acquired in a client-serving capacity so as to hold it in a proprietary capacity, it will be regarded as a dealing in a proprietary capacity.*

*(c) Recognised intermediaries which are principal traders connected with a party to the offer and to which exempt principal trader status is not applicable should disclose dealings under Rule 8.4.*

**10. Responsibilities of intermediaries**

*Intermediaries are expected to co-operate with the Panel in its enquiries. Therefore, those who deal in relevant securities, or who have relevant interests, short positions or rights to subscribe, should appreciate that intermediaries will supply the Panel with relevant information as to those dealings and positions, including identities of clients and full client contact information, as part of that co-operation.*

**11. Unquoted public companies and relevant private companies**

*The requirements to disclose dealings and positions under Rule 8 apply also in respect of the relevant securities of public companies whose securities are not admitted to trading and of relevant private companies.*

**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)).*

*(b) If a potential offeror has not been identified as such, it will not need to make an Opening Position Disclosure under Rule 8.1(a)(i) or (ii) until after the announcement that first identifies it as an offeror. However, before that time, the potential offeror and persons acting in concert with it will need to make*

**RULE 8 CONTINUED****NOTES ON RULE 8 continued**

*Opening Position Disclosures in accordance with Rule 8.3(a), if applicable. If members of an offer consortium that has not been identified as such might be subject to Rule 8.3(c), the Panel should be consulted. In such cases, the consortium members will not normally be required to make a joint Opening Position Disclosure which could identify them as such, although any member who is interested in 1% or more of a class of relevant securities of the offeree company will be required to make an individual Opening Position Disclosure.*

*(c) After the announcement that first identifies a potential offeror as such, it will be required to make an Opening Position Disclosure in accordance with Rule 8.1(a)(i). Such disclosure must include details in relation to the relevant securities of the offeree company or any securities exchange offeror, even if certain details have previously been disclosed by the potential offeror or persons acting in concert with it in accordance with Rule 8.3.*

**13. Other statutory or regulatory provisions**

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

**14. Amendments**

*If details included in a disclosure under Rule 8 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.*

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

*See Rule 2.7(c)(vi) and Rule 2.11.*

**SECTION F. THE MANDATORY OFFER AND ITS TERMS****RULE 9****9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT**

Except with the consent of the Panel, when:

(a) any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which persons acting in concert with him are interested) carry 30% or more of the voting rights of a company; or

(b) any person, together with persons acting in concert with him, is interested in shares which in the aggregate carry not less than 30% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights and such person, or any person acting in concert with him, acquires an interest in any other shares which increases the percentage of shares carrying voting rights in which he is interested,

such person shall extend offers, on the basis set out in Rules 9.3, 9.4 and 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any other class of transferable securities carrying voting rights. Offers for different classes of equity share capital must be comparable; the Panel should be consulted in advance in such cases.

An offer will not be required under this Rule where control of the offeree company is acquired as a result of a voluntary offer made in accordance with the Code to all the holders of voting equity share capital and other transferable securities carrying voting rights.

*(See Notes on Dispensations from Rule 9.)*

**NOTES ON RULE 9.1****PERSONS ACTING IN CONCERT**

*The majority of questions which arise in the context of Rule 9 relate to persons acting in concert. The definition of “acting in concert” contains a list of persons who are presumed to be acting in concert unless the contrary is established. Without prejudice to the general application of the definition, the following Notes illustrate how the Rule and definition are interpreted by the Panel. Any Panel view expressed in relation to “acting in concert” can relate only to the Code and should not be taken as guidance on any other statutory or regulatory provisions.*

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued****1. Coming together to act in concert**

*Acting in concert requires the co-operation of two or more parties. When a party has acquired an interest in shares without the knowledge of other persons with whom he subsequently comes together to co-operate as a group to obtain or consolidate control of a company, and the shares in which they are interested at the time of coming together carry 30% or more of the voting rights in that company, the Panel will not normally require a general offer to be made under this Rule. Such parties having once come together, however, the provisions of the Rule will apply so that:*

*(a) if the shares in which they are interested together carry less than 30% of the voting rights in that company, an obligation to make an offer will arise if any member of that group acquires an interest in any further shares so that the shares in which they are interested together carry 30% or more of such voting rights; or*

*(b) if the shares in which they are interested together carry 30% or more of the voting rights in that company and they do not hold shares carrying more than 50% of the voting rights in that company, no member of that group may acquire an interest in any other shares carrying voting rights in that company without incurring a similar obligation.*

*(See also Note 4 below.)*

**2. Collective shareholder action**

*The Panel does not normally regard the action of shareholders voting together on a particular resolution as action which of itself indicates that such parties are acting in concert. However, the Panel will normally presume shareholders who requisition or threaten to requisition the consideration of a board control-seeking proposal either at an annual general meeting or at an extraordinary general meeting, in each case together with their supporters as at the date of the requisition or threat, to be acting in concert with each other and with the proposed directors. Such parties will be presumed to have come into concert once an agreement or understanding is reached between them in respect of a board control-seeking proposal with the result that subsequent acquisitions of interests in shares by any member of the group could give rise to an offer obligation.*

*In determining whether a proposal is board control-seeking, the Panel will have regard to a number of factors, including the following:*

*(a) the relationship between any of the proposed directors and any of the shareholders proposing them or their supporters. Relevant factors in this regard will include:*

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued**

- (i) whether there is or has been any prior relationship between any of the activist shareholders, or their supporters, and any of the proposed directors;*
- (ii) whether there are any agreements, arrangements or understandings between any of the activist shareholders, or their supporters, and any of the proposed directors with regard to their proposed appointment; and*
- (iii) whether any of the proposed directors will be remunerated in any way by any of the activist shareholders, or their supporters, as a result of or following their appointment.*

*If, on this analysis, there is no relationship between any of the proposed directors and any of the activist shareholders or their supporters, or if any such relationship is insignificant, the proposal will not be considered to be board control-seeking such that the parties will not be presumed to be acting in concert and it will not be necessary for the factors set out at paragraphs (b) to (f) below to be considered. If, however, such a relationship does exist which is not insignificant, the proposal may be considered to be board control-seeking, depending on the application of the factors set out at paragraph (b) below or, if appropriate, paragraphs (b) to (f) below;*

*(b) the number of directors to be appointed or replaced compared with the total size of the board.*

*If it is proposed to appoint or replace only one director, the proposal will not normally be considered to be board control-seeking. If it is proposed to replace the entire board, or if the implementation of the proposal would result in the proposed directors representing a majority of the directors on the board, the proposal will normally be considered to be board control-seeking.*

*If, however, the implementation of the proposal would not result in the proposed directors representing a majority of the directors on the board, the proposal will not normally be considered to be board control-seeking unless an analysis of the factors set out at paragraphs (c) to (f) below would indicate otherwise;*

*(c) the board positions held by the directors being replaced and to be held by the proposed directors;*

*(d) the nature of the mandate, if any, for the proposed directors;*

*(e) whether any of the activist shareholders, or any of their supporters, will benefit, either directly or indirectly, as a result of the implementation of the proposal other than through its interest in shares in the company; and*

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued**

*(f) the relationship between the proposed directors and the existing directors and/or the relationship between the existing directors and the activist shareholders or their supporters.*

*In respect of a proposal to replace some or all of the directors and the investment manager of an investment trust company, the relationship between the proposed new investment manager and any of the activist shareholders, or their supporters, will also be relevant to the analysis of the factors set out at paragraph (a) above and, if appropriate, paragraphs (c) to (f) above.*

*In determining whether it is appropriate for such parties to be held no longer to be acting in concert, the Panel will take account of a number of factors, including the following:*

*(a) whether the parties have been successful in achieving their stated objective;*

*(b) whether there is any evidence to indicate that the parties should continue to be held to be acting in concert;*

*(c) whether there is any evidence of an ongoing struggle between the activist shareholders, or their supporters, and the board of the company;*

*(d) the types of activist shareholder involved and the relationship between them; and*

*(e) the relationship between the activist shareholders, or their supporters, and the proposed/new directors.*

**3. Directors of a company**

*Directors of a company will be presumed to be acting in concert during an offer period or when they have reason to believe that a bona fide offer might be imminent. The normal provisions of this Rule will apply in these circumstances. At other times, directors of a company are not presumed to be acting in concert in relation to control of the company of which they are directors. Subject to the constraints imposed by the Rules, directors are, so far as the Code is concerned, free to deal in the shares of their company. The Panel reserves the right, however, to examine situations closely should the actions of the directors suggest that they may be acting in concert.*

*If any persons who have indicated their support for the offeree company's directors against an offer thereafter acquire an interest in shares to frustrate the offer, the Panel would consider their position in relation to the directors. The directors of companies defending against an offer, their supporters or*

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued**

*their advisers, should consult the Panel before acquiring an interest in any shares which might lead to the incurring of an obligation under this Rule.*

*(See also Note 5 on the definition of acting in concert.)*

**4. Acquisition of interests in shares by members of a group acting in concert**

*While the Panel accepts that the concept of persons acting in concert recognises a group as being the equivalent of a single person, the membership of such groups may change at any time. This being the case, there will be circumstances when the acquisition of an interest in shares by one member of a group acting in concert from another member will result in the acquirer of the interest in shares having an obligation to make an offer. Whenever a group acting in concert is interested in shares which together carry 30% or more of the voting rights in a company and as a result of an acquisition of an interest in shares from another member of the group a single member comes to be interested in shares carrying 30% or more or, if already interested in shares carrying over 30%, acquires an interest in any other shares carrying voting rights, the factors which the Panel will take into account in considering whether to waive the obligation to make an offer include:*

- (a) whether the leader of the group or the member with the largest individual interest in shares has changed and whether the balance between the interests in the group has changed significantly;*
- (b) the price paid for the interest in shares acquired; and*
- (c) the relationship between the persons acting in concert and how long they have been acting in concert.*

*When the group is interested in shares carrying 30% or more of the voting rights in a company but does not hold shares carrying more than 50% of such voting rights, an offer obligation will arise if an interest in any other shares carrying voting rights is acquired from non-members of the group. When the group holds shares carrying over 50% of the voting rights in a company, no obligations normally arise from acquisitions by any member of the group. However, subject to considerations similar to those set out in the previous paragraph, the Panel may regard as giving rise to an obligation to make an offer the acquisition by a single member of the group of an interest in shares sufficient to increase the shares carrying voting rights in which he is interested to 30% or more or, if he is already interested in 30% or more, which increases the percentage of shares carrying voting rights in which he is interested.*

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued**

*For the purpose of calculating the highest price paid in the event of an offer under this Rule, the prices paid for an interest in shares acquired by one member of a group acting in concert from another may be relevant where, for example, all shares or interests in shares held within a group are acquired by that member making the offer or where prices paid between members are materially above the market price.*

**5. Employee benefit trusts**

*The Panel must be consulted in advance of any proposed acquisition of an interest in shares if the aggregate number of shares in which the directors, any other persons acting, or presumed to be acting, in concert with any of the directors and the trustees of an employee benefit trust (“EBT”) are interested will, as a result of the acquisition, carry 30% or more of the voting rights or, if already carrying 30% or more, will increase further. The Panel must also be consulted in any case where a person (or group of persons acting, or presumed to be acting, in concert) is interested in shares carrying 30% or more (but does not hold shares carrying more than 50%) of the voting rights and it is proposed that an EBT acquires an interest in any other shares.*

*The mere establishment and operation of an EBT will not by itself give rise to a presumption that the trustees are acting in concert with the directors and/or a controller (or group of persons acting, or presumed to be acting in concert). The Panel will, however, consider all relevant factors including: the identities of the trustees; the composition of any remuneration committee; the nature of the funding arrangements; the percentage of the issued share capital in which the EBT is interested; the number of shares held to satisfy awards made to directors; the number of shares in which the EBT is interested in excess of those required to satisfy existing awards; the prices at which, method by which and persons from whom any interests in existing shares have been or are to be acquired; the established policy or practice of the trustees as regards decisions to acquire interests in shares or to exercise, or procure the exercise of, votes in respect of shares in which the EBT is interested; whether or not the directors themselves are presumed to be in concert; and the nature of any relationship existing between a controller (or group of persons acting, or presumed to be acting in concert) and both the directors and the trustees. Its consideration of these factors may lead the Panel to conclude that the trustees are acting in concert with the directors and/or a controller (or group).*

*No presumption of concertedness will apply in respect of shares held within the EBT but controlled by the beneficiaries.*

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued****OTHER GENERAL INTERPRETATIONS****6. Vendor of part only of an interest in shares**

Shareholders sometimes wish to sell part only of their shareholdings or a purchaser may be prepared to purchase part only of a shareholding. This arises particularly where a purchaser wishes to acquire shares carrying just under 30% of the voting rights in a company, thereby avoiding an obligation under this Rule to make a general offer. The Panel will be concerned to see whether in such circumstances the vendor is acting in concert with the purchaser and/or has effectively allowed the purchaser to acquire a significant degree of control over the shares retained by the vendor such that the purchaser should be treated as having acquired an interest in them by virtue of paragraph (2) of the definition of interests in securities, in which case a general offer would normally be required. A judgement on whether such significant degree of control exists will obviously depend on the circumstances of each individual case. In reaching its decision, the Panel will have regard, inter alia, to the points set out below.

(a) There might be less likelihood of a significant degree of control over the retained shares if the vendor was not an "insider".

(b) The payment of a very high price for the shares would tend to suggest that control over the entire holding was being secured.

(c) Where the retained shares are in themselves a significant part of the company's capital (or even in certain circumstances represent a significant sum of money in absolute terms), a greater element of independence may be presumed.

(d) It would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas as regards the way the company is to be directed are reasonably compatible with his own. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, divorced from any other evidence of a significant degree of control over the retained shares, would not lead the Panel to conclude that a general offer should be made.

Similar considerations will arise where the vendor remains interested in shares but without itself owning any of such shares, or where the acquisition is not of the shares themselves but of another type of interest in shares.

**7. Placings and other arrangements**

When a person is to acquire an interest in shares which will result in his being interested in shares carrying 30% or more of the voting rights of a company, the Panel will consider waiving the requirements of this Rule if firm arrangements are made for the number of shares carrying voting rights in

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued**

which he is interested to be reduced to below 30% prior to the acquisition (for example, by a placing of shares) or, in certain exceptional circumstances, if an undertaking is given to make such a reduction within a very short period after the acquisition. In all such cases, the Panel must be consulted in advance. The Panel will be concerned to ensure that none of the persons with whom the acquirer enters into transactions in order to reduce his interests is acting in concert with the acquirer; for example, an obligation under this Rule will not be avoided by placing shares with a number of persons having a common link, such as the discretionary clients of a fund manager who would be connected with the acquirer if he were an offeror (unless, in such circumstances, the fund manager would have exempt status). (See also Rule 9.7.)

**8. The chain principle**

Occasionally, a person or group of persons acting in concert acquiring shares resulting in a holding of over 50% of the voting rights of a company (which need not be a company to which the Code applies) will thereby acquire or consolidate control, as defined in the Code, of a second company because the first company itself is interested, either directly or indirectly through intermediate companies, in a controlling block of shares in the second company, or is interested in shares which, when aggregated with those which the person or group is already interested in, secure or consolidate control of the second company. The Panel will not normally require an offer to be made under this Rule in these circumstances unless either:

- (a) the interest in shares which the first company has in the second company is significant in relation to the first company. In assessing this, the Panel will take into account a number of factors including, as appropriate, the assets, profits and market values of the respective companies. Relative values of 50% or more will normally be regarded as significant; or
- (b) securing control of the second company might reasonably be considered to be a significant purpose of acquiring control of the first company.

The Panel should be consulted in all cases which may come within the scope of this Note to establish whether, in the circumstances, any obligation arises under this Rule.

**9. Triggering Rule 9 during an offer period\***

If it is proposed to incur an obligation under this Rule during the course of a non-mandatory offer, the Panel must be consulted in advance. Once such an obligation is incurred, an offer in compliance with this Rule must be

\*In the case of a scheme of arrangement, see Note 2 on Section 2 of Appendix 7.

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued**

*announced immediately. If the cash is dependent upon a securities exchange, Note 3 on Rule 9.3 will be relevant. (See also Rule 7.1.)*

*Subject to Note 3 on Rule 9.3, where no change in the consideration is involved it will be sufficient, following the announcement, simply to send a notification to offeree company shareholders and persons with information rights setting out the new number of shares in which the offeror and persons acting in concert with it are interested, of the fact that the acceptance condition (in the form required by Rule 9.3) is the only condition remaining and of the period for which the offer will remain open following the publication of the document.*

*An offer made in compliance with this Rule must remain open for not less than 14 days following the date on which the document is published and as required by Rules 31.4 and 33.1.*

*Notes 3 and 4 on Rule 32.1 set out certain restrictions on the incurring of an obligation under this Rule during the offer period.*

**10. Convertible securities, warrants and options**

*In general, the acquisition of securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares does not give rise to an obligation under this Rule to make a general offer but the exercise of any conversion or subscription rights or options will be considered to be an acquisition of an interest in shares for the purpose of the Rule.*

*The Panel will not normally require an offer to be made following the exercise of conversion or subscription rights provided that the issue of convertible securities, or rights to subscribe for new shares carrying voting rights, to the person exercising the rights is approved by a vote of independent shareholders in general meeting in the manner described in Note 1 of the Notes on Dispensations from Rule 9. However, if the potential controller proposes to acquire any interest in further voting shares following the relevant meeting, the Panel should be consulted to establish the number of shares to which the waiver will be deemed to apply.*

*Where securities with conversion or subscription rights were issued at a time when no offer obligation on exercise of such rights would arise and no independent shareholders' approval was obtained, the Panel will consider the case on its merits and will have regard, inter alia, to the votes cast on any relevant resolution, the number of shares concerned and the attitude of the board of the company. It is always open to the holder of such rights to dispose of sufficient rights so that, on exercise, the shares in which he would*

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued**

*be interested would together carry less than 30% of the voting rights in the company. In circumstances where such rights could not be transferred prior to exercise, the Panel would consider waiving the offer obligation arising upon an exercise of rights provided there was an undertaking to reduce the number of shares carrying voting rights in which he would be interested to below 30% within a reasonable time. (See also Rule 9.7.)*

*Any holder of conversion or subscription rights who intends to exercise such rights and so to be interested in shares carrying 30% or more of the voting rights of a company should consult the Panel before doing so to determine whether an offer obligation would arise under the Rule and if so at what price (see also Note 2(c) on Rule 9.5).*

*Where there are conversion or subscription rights currently capable of being exercised, this Rule is invoked at a level of 30% of the existing voting rights. Where they are capable of being exercised during an offer period, Notes 2 and 3 on Rule 10 will be relevant.*

*(See also Note 14 on Rule 9.1.)*

**11. The reduction or dilution of interests in shares**

*If a person or a group of persons acting in concert interested in shares carrying more than 30% of the voting rights of a company reduces its interest but not to less than 30%, such person or persons may subsequently acquire an interest in further shares without incurring an obligation to make a general offer subject to both of the following limitations:*

*(a) the total number of shares in which interests may be acquired under this Note in any period of 12 months must not exceed 1% of the voting share capital for the time being (and, in determining the number of shares in which interests have been acquired in any such 12 month period, any reductions in the number of shares in which the person or group is interested may not be netted off against acquisitions); and*

*(b) the percentage of shares in which the relevant person or group of persons acting in concert is interested following any acquisition under this Note must not exceed the highest percentage of shares in which such person or group of persons was interested in the previous 12 months.*

*Both these restrictions apply, and must be tested, at the time of any acquisition proposed under this Note, and by reference to the position which would result immediately upon implementation of the proposed acquisition. On each such occasion, the test must take account of the total issued voting*

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued**

*share capital at the relevant time, and total number of shares and highest percentage concerned during the immediately preceding twelve months. As a result, it will not be permitted to increase percentage interests progressively from one year to another.*

*The Panel will regard a reduction of the percentage of shares in which the person or group is interested as a result of dilution following the issue of new shares as also being relevant for these purposes. Accordingly, dilution of an interest in shares carrying voting rights of more than 30% will give rise to the ability to acquire an interest in further shares on the basis set out in this Note provided that the total percentage of shares carrying voting rights in which the person or group is interested has not been reduced below 30% and subject to the limits stipulated above.*

*If a shareholding has remained above 50% of the voting rights of a company, or is restored to more than 50% by acquisitions permitted under this Note, further acquisitions are unrestricted by the Rule. Otherwise, a percentage interest in shares carrying voting rights of more than 30% which is reduced or diluted may not be restored to its original level without giving rise to an obligation to make a general offer except as permitted under this Note. However, nothing in this Note affects or restricts subscriptions for new shares approved by independent shareholders in the manner outlined in Note 1 of the Notes on Dispensations from Rule 9.*

*(See also Rule 37.1.)*

**12. Gifts**

*If a person receives a gift of shares or an interest in shares which takes the aggregate number of shares carrying voting rights in which he is interested to 30% or more, he must consult the Panel. (See also Note 3 on Rule 9.5.)*

**13. Discretionary fund managers and principal traders**

*Dealings by non-exempt discretionary fund managers and principal traders which are connected with an offeror or the offeree company will be treated in accordance with Rule 7.2.*

**14. Allotted but unissued shares**

*When shares of a company carrying voting rights have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Panel should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under Rule 9.1.*

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued****15. Treasury shares**

*When an obligation to make an offer is incurred under this Rule, it is not necessary for the offer to extend to shares in the offeree company held in treasury.*

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

*Rule 9 will be relevant if the aggregate number of shares in which any person and all persons controlling#, controlled by or under the same control as that person (including any exempt fund manager or exempt principal trader) are interested carry 30% or more of the voting rights of a company. However, provided that recognised intermediary status has not fallen away (see Note 3 on the definition of recognised intermediary), a recognised intermediary acting in a client-serving capacity will not be treated as interested in (or as having acquired an interest in) any securities by virtue only of paragraph (3) or paragraph (4) of the definition of interests in securities (other than those held in a proprietary capacity) for these purposes.*

*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.*

**17. Borrowed or lent shares**

*For the purpose of Rule 9.1, if a person has borrowed or lent shares he will be treated as interested in such shares save for any borrowed shares which he has either on-lent or sold. A person must consult the Panel before borrowing or acquiring an interest in shares which, when taken together with shares (including lent shares) in which he or any person acting in concert with him is already interested, and shares already borrowed by him or any person acting in concert with him, might result in an obligation to make a mandatory offer being triggered. Where a person intends to borrow and lend shares on the same day, a mandatory offer will normally be required only if this will result in an increase in his net borrowing position, or that of any person acting in concert with him, as at midnight on that day. See also Note 2 on Rule 9.3.*

*#See Note at end of Definitions Section.*

**RULE 9 CONTINUED****NOTES ON RULE 9.1 continued****18. Changes in the nature of a person's interest**

*Subject to Note 2 on Rule 9.3, for the purpose of this Rule 9.1, a person will not normally be treated as having acquired an interest in shares as a result only of a transaction under which the number of shares in which he is interested under the different paragraphs of the definition of interests in securities changes but the aggregate number of shares in which he is interested following the transaction remains the same (for example, where the person acquires shares on exercise of a call option).*

*However, a person who was interested in any shares by virtue of paragraph (3) or paragraph (4) of the definition of interests in securities on 20 May 2006 (when such interests first become relevant for the purpose of Rule 9.1) will normally be treated as having acquired an interest in shares if he subsequently becomes interested in such shares by virtue of paragraph (1) or paragraph (2) of the definition of interests in securities.*

*The Panel should be consulted in all such cases to establish whether, in the circumstances, any obligation arises under this Rule.*

**9.2 OBLIGATIONS OF OTHER PERSONS**

**In addition to the person specified in Rule 9.1, each of the principal members of a group of persons acting in concert with him may, according to the circumstances of the case, have the obligation to extend an offer.**

**NOTE ON RULE 9.2*****Prime responsibility***

*The prime responsibility for making an offer under this Rule normally attaches to the person who makes the acquisition which imposes the obligation to make an offer. If such person is not a principal member of the group acting in concert, the obligation to make an offer may attach to the principal member or members and, in exceptional circumstances, to other members of the group acting in concert. This could include a member of the group who at the time when the obligation arises does not have any interest in shares. In this context, the Panel will not normally regard the underwriter of a mandatory offer, by virtue of his underwriting alone, as being a member of a group acting in concert and, therefore, responsible for making the offer (but see Note 3 on the definition of acting in concert).*

*An agreement between a person and a bank under which the person borrows money for the acquisition of shares or an interest in shares which gives rise to an obligation under the Rule will not of itself fall within the above.*

**RULE 9 CONTINUED****9.3 CONDITIONS AND CONSENTS**

*NB This Rule should be read in conjunction with Appendix 4.*

**Except with the consent of the Panel (see Note 3):**

**(a) offers made under Rule 9 must be conditional only upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding shares carrying more than 50% of the voting rights; and**

**(b) no acquisition of any interest in shares which would give rise to a requirement for an offer under this Rule may be made if the making or implementation of such offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or upon any other conditions, consents or arrangements.**

**NOTES ON RULE 9.3****1. When more than 50% is held**

*An offer made under this Rule should normally be unconditional when the offeror and persons acting in concert with it hold shares carrying more than 50% of the voting rights before the offer is made.*

**2. Acceptance condition**

*Notes 2-7 on Rule 10 also apply to offers under Rule 9.*

*In the event that an offer under Rule 9 lapses because a purchase may not be counted as a result of Note 5 on Rule 10 and subsequently the purchase is completed, the Panel should be consulted. It will require appropriate action to be taken such as the making of a new offer or the reduction of the percentage of shares in which the offeror and persons acting in concert with it are interested. (See also Rule 9.7.)*

*In the event that:*

*(a) an offer under Rule 9 lapsed by virtue of the acceptance condition not having been satisfied in circumstances where the shares which were assented to the offer, together with the shares in which the offeror and persons acting in concert with it were interested at the time the offer lapsed, amounted in aggregate to more than 50% of the shares carrying voting rights; and*

*(b) subsequently the offeror, or any person acting in concert with it, becomes interested in shares in the offeree company by virtue of paragraph*

**RULE 9 CONTINUED****NOTES ON RULE 9.3 continued**

*(1) or paragraph (2) of the definition of interests in securities and, when the offer lapsed, the offeror or any person acting in concert with it at that time was interested in such number (or a greater number) of shares in the offeree company by virtue only of paragraph (3) or paragraph (4) of that definition, then a further offer in accordance with Rule 9 must normally be made if the shares in which the offeror and any persons acting in concert with it are then interested by virtue of paragraph (1) and paragraph (2) of the definition of interests in securities carry 30% or more of the voting rights of the offeree company. The price at which such an offer must be made will normally be the higher of the price at which the lapsed offer was made and the price determined under Note 2(a) on Rule 9.5. The Panel should be consulted in all cases in which this Note may be relevant. (See also Rule 35.1.)*

*The Panel must be consulted if the offeror, or any person acting in concert with it, has borrowed or lent shares in the offeree company. The Panel will then decide how the borrowed or lent shares should be treated for the purpose of the acceptance condition.*

**3. When dispensations may be granted**

*The Panel will not normally consider a request for a dispensation under this Rule other than in exceptional circumstances, such as:*

*(a) when the necessary cash is to be provided, wholly or in part, by an issue of new securities. The Panel will normally require that both the announcement of the offer and the offer document include statements that if the acceptance condition is satisfied but the other conditions required by Rule 13.4(b) are not satisfied within the time required by Rule 31.7, and as a result the offer lapses, the offeror will immediately announce a firm intention to make a new cash offer in compliance with this Rule at the price required by Rule 9.5 (or, if greater, at the cash price offered under the lapsed offer); and*

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

*When a dispensation is given, the offeror must endeavour to fulfil all the other conditions with all due diligence.*

*(See also Rule 9.7.)*

**RULE 9 CONTINUED****9.4 THE CMA AND THE EUROPEAN COMMISSION**

Offers under this Rule must, if appropriate, contain the terms required by Rule 12.1(a) and (b).

**NOTES ON RULE 9.4****1. If an offer lapses pursuant to Rule 12.1(a) or (b)**

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

**2. Further acquisitions**

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

**9.5 CONSIDERATION TO BE OFFERED**

**(a)** An offer made under Rule 9 must, in respect of each class of share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class during the 12 months prior to the announcement of that offer. The Panel should be consulted where there is more than one class of share capital involved.

**(b)** If, after an announcement of an offer made under Rule 9 for a class of share capital and before the offer closes for acceptance, the offeror

**RULE 9 CONTINUED**

or any person acting in concert with it acquires any interest in shares of that class at above the offer price, it shall increase its offer for that class to not less than the highest price paid for the interest in shares so acquired. Immediately after the acquisition, an appropriate announcement must be made in accordance with Rule 7.1.

(c) In certain circumstances, the Panel may determine that the highest price calculated under paragraphs (a) and (b) should be adjusted. (See Note 3.)

(d) The cash offer or the cash alternative must remain open after the offer has become unconditional as to acceptances for not less than 14 days after the date on which it would otherwise have expired (see Rule 31.4).

**NOTES ON RULE 9.5****1. Nature of consideration**

*When an interest in shares has been acquired for a consideration other than cash, the offer must nevertheless be in cash or be accompanied by a cash alternative of at least equal value, which must be determined by an independent valuation.*

*When there have been significant acquisitions in exchange for securities, General Principle 1 may be relevant and such securities may be required to be offered to all shareholders: a cash offer will also be required. The Panel should be consulted in such cases.*

**2. Calculation of the price**

(a) *The price paid for any acquisition of an interest in shares will be determined as follows:*

*(i) in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, his broker acting in an agency capacity) and the vendor (or principal trader) is struck;*

*(ii) in the case of a call option which remains unexercised, the price paid will normally be treated as the middle market price of the shares which are the subject of the option at the time the option is entered into;*

*(iii) in the case of a call option which has been exercised, the price paid will normally be treated as the amount paid on exercise of the option together with any amount paid by the option-holder on entering into the option;*

*(iv) in the case of a written put option (whether exercised or not), the price paid will normally be treated as the amount paid or payable on*

**RULE 9 CONTINUED****NOTES ON RULE 9.5 continued**

*exercise of the option less any amount paid by the option-holder on entering into the option; and*

*(v) in the case of a derivative, the price paid will normally be treated as the initial reference price together with any fee paid on entering into the derivative.*

*In the case of an option or a derivative, however, if the option exercise price or derivative reference price is calculated by reference to the average price of a number of acquisitions by the counterparty of interests in underlying securities, the price paid will normally be determined to be the highest price at which such acquisitions are actually made.*

*Any stamp duty and broker's commission payable should be excluded.*

*Where a person acquired an interest in shares more than 12 months prior to the announcement of the offer made under Rule 9 as a result of any option, derivative or agreement to purchase and, either during the 12 months prior to such announcement or after the announcement and before the offer closes for acceptance, the person acquires any of the relevant shares, no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, if the terms of the instrument have been varied in any way, or if the shares are acquired other than on the terms of the original instrument, the Panel should be consulted.*

*(b) If any interest in shares has been acquired in exchange for securities which are admitted to trading, the price will normally be established by reference to the middle market price of the securities at the time of the acquisition.*

*(c) If any interest in shares has been acquired by the conversion or exercise (as applicable) of securities convertible into, warrants in respect of, or options or other rights to subscribe for new shares, the price will normally be established by reference to the middle market price of the shares in question at the close of business on the day on which the relevant notice was submitted. If, however, the convertible securities, warrants, options or other subscription rights were acquired either during the 12 months prior to the announcement of the offer made under Rule 9 or after the announcement and before the offer closes for acceptance, they will be treated as if they were purchases of the underlying shares at a price calculated by reference to the acquisition price and the relevant conversion or exercise terms.*

*The Panel should be consulted in advance if it is proposed to acquire the voting rights attaching to shares, or general control of them, and in the circumstances described in (b) and (c) above.*

**RULE 9 CONTINUED****NOTES ON RULE 9.5 continued****3. Adjustment of highest price**

*Circumstances which the Panel might take into account when considering an adjustment of the highest price include:*

- (a) the size and timing of the relevant acquisitions;*
- (b) the attitude of the board of the offeree company;*
- (c) whether interests in shares had been acquired at high prices from directors or other persons closely connected with the offeror or the offeree company;*
- (d) the number of shares in which interests have been acquired in the preceding 12 months;*
- (e) if an offer is required in order to enable a company in serious financial difficulty to be rescued;*
- (f) if an offer is required in the circumstances set out in Note 12 on Rule 9.1; and*
- (g) if an offer is required in the circumstances set out in Rule 37.1.*

*The price payable in the circumstances set out above will be the price that is fair and reasonable taking into account all the factors that are relevant to the circumstances.*

*In any case where the highest price is adjusted under Rule 9.5(c), the Panel will publish its decision.*

**4. Cum dividend**

*When accepting shareholders are entitled under the offer to retain a dividend declared or forecast by the offeree company but not yet paid, the offeror, in establishing the level of the cash offer, may deduct from the highest price paid the net dividend to which offeree company shareholders are entitled. Where the offeror or any person acting in concert with it has acquired any interest in shares to which this Note may be relevant other than by purchasing shares, the Panel should be consulted.*

**RULE 9 CONTINUED****9.6 OBLIGATIONS OF DIRECTORS**

When directors (and their close relatives and related trusts) sell shares to a person (or enter into options, derivatives or other transactions) as a result of which that person is required to make an offer under this Rule, the directors must ensure that as a condition of the sale (or other relevant transaction) the person undertakes to fulfil his obligations under the Rule. In addition, except with the consent of the Panel, such directors should not resign from the board until the first closing date of the offer or the date when the offer becomes wholly unconditional, whichever is the later.

**9.7 VOTING RESTRICTIONS AND DISPOSAL OF INTERESTS**

Where the Panel agrees to the disposal of interests in shares by a person as an alternative to making an offer pursuant to Rule 9.1, the Panel must be consulted as to the interests required to be disposed of and the application, pending completion of the disposal, of restrictions on the exercise of the voting rights (or the procurement of the exercise of the voting rights) attaching to the shares in which that person and persons acting in concert with that person are interested. Similarly, where an offer made pursuant to Rule 9.1 lapses for a reason other than the acceptance condition not being satisfied, or where a new offer is required pursuant to Note 2 on Rule 9.3, the Panel must be consulted regarding the ability of the offeror and any persons acting in concert with it to exercise, or procure the exercise of, the voting rights attaching to the shares of the offeree company in which they are interested.

**NOTE ON RULE 9.7*****Calculation of number of shares to which voting restrictions will be applied and the number of interests to be disposed of***

*Where an obligation under Rule 9.1 has arisen by virtue of:*

*(a) Rule 9.1(a), the number of shares in relation to which voting restrictions, if any, will be applied will normally be such number of shares as results in the person to whom Rule 9.1(a) applies (together with persons acting in concert with that person) being able to vote less than 30% of the shares in the offeree company; or*

*(b) Rule 9.1(b), the number of shares in relation to which voting restrictions, if any, will be applied will normally be such number of shares as results in the person to whom Rule 9.1(b) applies (together with persons acting in concert with that person) being able to vote no more than the percentage of interests in the offeree company held by those persons prior to the triggering acquisition being made.*

**RULE 9 CONTINUED****NOTE ON RULE 9.7 continued**

*In each case the calculation will be made by reference to the reduced maximum number of shares entitled to be voted.*

*Where a disposal of interests in shares is permitted as an alternative to making an offer, the interests in shares required to be disposed of must be sufficient to take the total number of shares carrying voting rights in which the offeror and persons acting in concert with it are interested either, if Rule 9.1(a) applies, to below 30% or, if Rule 9.1(b) applies, to the percentage in which they were interested prior to the triggering acquisition being made.*

**RULE 9 CONTINUED****NOTES ON DISPENSATIONS FROM RULE 9****1. Vote of independent shareholders on the issue of new securities (“Whitewash”)**

(See Appendix 1 for Guidance Note)

*When the issue of new securities as consideration for an acquisition or a cash subscription would otherwise result in an obligation to make a general offer under this Rule, the Panel will normally waive the obligation if there is an independent vote at a shareholders’ meeting. The requirement for a general offer will also be waived, provided there has been a vote of independent shareholders, in cases involving the underwriting of an issue of shares. If an underwriter incurs an obligation under this Rule unexpectedly, for example as a result of an inability to sub-underwrite all or part of his liability, the Panel should be consulted.*

*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.*

*When a person or group of persons acting in concert may, as a result of such arrangements, come to hold shares carrying more than 50% of the voting rights of the company, specific and prominent reference to the possibility must be contained in the document and to the fact that the person or group will be able to acquire interests in further shares without incurring any further obligation under Rule 9 to make a general offer.*

*When a waiver has been granted, as described above, in respect of convertible securities, options or rights to subscribe for shares, details, including the fact of the waiver and the maximum number of securities that may be issued as a result, should be included in the company’s annual report and accounts until the securities in respect of which the waiver has been granted have been issued or it is confirmed that no such issue will be made.*

**RULE 9 CONTINUED****NOTES ON DISPENSATIONS FROM RULE 9 continued**

*Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company:*

- (a) the Panel will not normally waive an obligation under this Rule if the person to whom the new securities are to be issued or any persons acting in concert with him have acquired any interest in shares in the company in the 12 months prior to the publication of the circular relating to the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;*
- (b) a waiver will be invalidated if any acquisitions of interests in shares are made in the period between the publication of the circular and the shareholders' meeting.*

*In exceptional circumstances, the Panel may consider waiving the requirement for a general offer where the approval of independent shareholders to the transfer of existing shares from one shareholder to another is obtained.*

**2. Enforcement of security for a loan**

*Where shares or other securities are charged as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make a general offer under this Rule, the Panel will not normally require an offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with the lender, so that the percentage of shares carrying voting rights in which the lender, together with persons acting in concert with it, is interested is reduced to below 30% in a manner satisfactory to the Panel. (See also Rule 9.7.)*

*In any case where arrangements are to be made involving a transfer of voting rights to the lender, but which do not amount to enforcement of the security, the Panel will wish to be convinced that such arrangements are necessary to preserve the lender's security and that the security was not given at a time when the lender had reason to believe that enforcement was likely.*

*When, following enforcement, a lender sells all or part of a shareholding, the provisions of this Rule will apply to the purchaser. Although a receiver, liquidator or administrator of a company is not required to make an offer when he acquires an interest in shares carrying 30% or more of the voting rights in another company, the provisions of the Rule apply to a purchaser from such a person.*

**3. Rescue operations**

*There are occasions when a company is in such a serious financial position that the only way it can be saved is by an urgent rescue operation which involves the issue of new shares without approval by a vote of independent*

**RULE 9 CONTINUED****NOTES ON DISPENSATIONS FROM RULE 9 continued**

shareholders or the acquisition of existing shares by the rescuer which would otherwise fall within the provisions of this Rule and normally require a general offer. The Panel may, however, waive the requirements of the Rule in such circumstances provided that either:

- (a) approval for the rescue operation by a vote of independent shareholders is obtained as soon as possible after the rescue operation is carried out; or
- (b) some other protection for independent shareholders is provided which the Panel considers satisfactory in the circumstances.

Where neither the approval of independent shareholders nor any other form of protection can be provided, a general offer under this Rule will be required. In such circumstances, however, the Panel may consider an adjustment of the highest price, pursuant to Note 3 on Rule 9.5.

The requirements of the Rule will not normally be waived in a case where a major shareholder in a company rather than that company itself is in need of rescue. The situation of that shareholder may have little relevance to the position of other shareholders and, therefore, the purchaser from such major shareholder must expect to be obliged to extend an offer under the Rule to all other shareholders.

**4. Inadvertent mistake**

If, due to an inadvertent mistake, a person incurs an obligation to make an offer under this Rule, the Panel will not normally require an offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with him, so that the percentage of shares carrying voting rights in which the person, together with persons acting in concert with him, is interested is reduced to below 30% in a manner satisfactory to the Panel. (See also Rule 9.7.)

**5. Shares carrying 50% or more of the voting rights**

The Panel will consider waiving the requirement for a general offer under this Rule where:

- (a) holders of shares carrying 50% or more of the voting rights state in writing that they would not accept such an offer; or
- (b) shares carrying 50% or more of the voting rights are already held by one other person.

**6. Enfranchisement of non-voting shares**

There is no requirement to make a general offer under this Rule if a person interested in non-voting shares becomes upon enfranchisement of those shares interested in shares carrying 30% or more of the voting rights of a company, except where shares or interests in shares have been acquired at a time when the person had reason to believe that enfranchisement would take place.

## SECTION G. THE VOLUNTARY OFFER AND ITS TERMS

### RULE 10. THE ACCEPTANCE CONDITION\*

*NB This Rule should be read in conjunction with Appendix 4.*

**It must be a condition of any offer for voting equity share capital or for other transferable securities carrying voting rights which, if accepted in full, would result in the offeror holding shares carrying over 50% of the voting rights of the offeree company that the offer will not become or be declared unconditional as to acceptances unless the offeror has acquired or agreed to acquire (either pursuant to the offer or otherwise) shares carrying over 50% of the voting rights.**

#### **NOTES ON RULE 10**

##### **1. Waiver of 50% condition**

*In certain exceptional cases, the Panel will consider waiving the requirements of this Rule subject to prior consultation and to appropriate safeguards. This might be appropriate where, for example, following a major change of management policy, it is desired to provide an opportunity for shareholders to dispose of their shares and where the offer is made on behalf of a group of investors who are otherwise wholly unconnected and whose purpose is not to gain control.*

##### **2. New shares**

*For the purpose of the acceptance condition, the offeror must take account of all shares carrying voting rights which are unconditionally allotted or issued before the offer becomes or is declared unconditional as to acceptances, whether pursuant to the exercise of conversion or subscription rights or otherwise. If in any case, for example, as a result of a rights issue, shares have been allotted in renounceable form (even if provisionally), the Panel should be consulted.*

##### **3. Information to offeror during offer period and extension of offer to new shares**

*Following the announcement of a firm intention to make an offer, the offeree company must, on request, provide the offeror as soon as possible with all relevant details of the issued shares (including the extent to which any such shares are held in treasury and details of any agreements to transfer or sell such shares out of treasury) and, to the extent not issued, the allotted shares and details of any conversion or subscription rights or any other rights pursuant to the exercise of which shares may be unconditionally allotted or issued during the offer period. In the case of conditionally allotted shares, the details should include the conditions and the date on which such conditions may be satisfied. In the case of rights, the details should include the number of shares which may be unconditionally allotted or issued during the offer*

\* This Rule is disapplied in a scheme.

**RULE 10 CONTINUED****NOTES ON RULE 10 continued**

*period as a result of the exercise of such rights, identifying separately those attributable to rights which commence or expire on different dates, and the various prices at which these rights could be exercised.*

*The offeree company must immediately notify the offeror of any allotment or issue of shares and of the exercise of any such rights during the offer period and provide the offeror as soon as possible with all relevant details.*

*The offeror must make appropriate arrangements to ensure that any person to whom shares of a type to which the offer relates are unconditionally allotted or issued during the offer period will have an opportunity of accepting the offer in respect of such shares.*

*In cases of doubt, the Panel must be consulted.*

**4. Acceptances**

*NB 1 Attention is drawn to Note 6 below which will be relevant if an acceptance condition is to be fulfilled before the final closing date.*

*NB 2 It is a matter for the offeror and its advisers, in particular the receiving agent, to determine whether, for shareholders within CREST, an offer can be accepted (and the acceptance withdrawn) electronically without the need for an acceptance form. If so, the procedure to be adopted must be made clear in the offer document.*

*An acceptance may not be counted towards fulfilling an acceptance condition unless:*

*(a) if it is to be effected by means of CREST without an acceptance form, the transfer to the relevant member's escrow account has settled in respect of the relevant number of shares on or before the last time for acceptance set out in the offeror's relevant document or announcement; or,*

*if it is to be effected by means of an acceptance form, both:*

*(b) it is received by the offeror's receiving agent on or before the last time for acceptance set out in the offeror's relevant document or announcement and the offeror's receiving agent has recorded that the acceptance and any relevant documents required by this Note have been so received or relevant escrow transfers identified; and*

*(c) the acceptance form is completed to a suitable standard (see below) and is:*

*(i) accompanied by share certificates in respect of the relevant shares and, if those certificates are not in the name of the acceptor, such other*

**RULE 10 CONTINUED****NOTES ON RULE 10 continued**

*documents (eg a duly stamped transfer of the relevant shares in favour of the acceptor executed by the registered holder and otherwise completed to a suitable standard) as are required by the practice set out in the then current edition of Company Secretarial Practice – The Manual of the Institute of Chartered Secretaries and Administrators (“the ICSA Manual”) in order to establish the right of the acceptor to become the registered holder of the relevant shares; and if an acceptance is accompanied by share certificates in respect of some but not all of the relevant shares then, subject to the other requirements of this sub-paragraph (i) being fulfilled in respect of the shares which are covered by share certificates, the acceptance may be treated as fulfilling the requirements of this sub-paragraph (i) insofar as it relates to those covered shares; or*

*(ii) in the case of a holding in CREST, covered by a transfer to the relevant member’s escrow account, details of which must be provided on the acceptance form; if the acceptance is covered by a transfer to escrow in respect of some but not all of the relevant holding, it may be treated as fulfilling the requirement of this sub-paragraph (ii) in respect of that part of the holding transferred to escrow; or*

*(iii) from a registered holder or his personal representatives (but only up to the amount of the registered holding as at the final time for acceptance and only to the extent that the acceptance relates to shares which are not taken into account under another sub-paragraph of this paragraph (c)); or*

*(iv) certified by the offeree company’s registrar.*

*For this purpose an acceptance form is completed to a suitable standard:*

*(1) where the form constitutes a transfer, if it meets the criteria (other than being duly stamped) for the registration of transfers set out in the ICSA Manual; or*

*(2) where the form does not constitute a transfer, if it constitutes a valid and irrevocable appointment of the offeror or some person on its behalf as an agent or attorney for the purpose of executing a transfer of the type referred to in (1) above on behalf of the acceptor.*

*If the acceptance form is executed by a person other than the registered holder, appropriate evidence of authority (eg grant of probate or certified copy of a power of attorney) must be produced as required by the practice set out in the ICSA Manual.*

**RULE 10 CONTINUED****NOTES ON RULE 10 continued****5. Purchases**

*NB Attention is drawn to Note 6 below which will be relevant if an acceptance condition is to be fulfilled before the final closing date, and also to Note 8 below which will be relevant if the offeror has borrowed any offeree company shares.*

*A purchase of shares by an offeror or its nominee (or in the case of a Rule 9 offer, a person acting in concert with the offeror, or its nominee) may be counted towards fulfilling an acceptance condition only if:*

*(a) the offeror or its nominee (or in the case of a Rule 9 offer, a person acting in concert with the offeror, or its nominee) is the registered holder of the shares; or*

*(b) a transfer of the shares in favour of the offeror or its nominee (or in the case of a Rule 9 offer, a person acting in concert with the offeror, or its nominee) executed by or on behalf of the registered holder and otherwise completed to a suitable standard (as specified in paragraph (c)(i) of Note 4 above) and accompanied by the relevant share certificates or certified by the offeree company's registrar is delivered by or on behalf of the offeror to the offeror's receiving agent on or before the last time for acceptance set out in the offeror's relevant document or announcement and the offeror's receiving agent has recorded that the transfer and accompanying documents have been so received.*

*A person who has agreed to sell shares to the offeror or a person acting in concert with it is not, by virtue only of the agreement, a "nominee" for the purposes of this Note.*

*The offeror must advise its receiving agent of any parties whose registered holdings or purchases are relevant for the purpose of the acceptance condition. The offeror's receiving agent must then certify the holding of each such party on the basis of the register (or, in relation to holdings in CREST in respect of which CREST maintains the register, the record of securities held in uncertificated form).*

**6. Offers becoming or being declared unconditional as to acceptances before the final closing date**

*In determining whether an acceptance condition has been fulfilled before the final closing date, all acceptances and purchases that comply with the requirements of Notes 4 and 5 on Rule 10 may be counted, other than those which fall within paragraph (c)(iii) of Note 4 or Note 8.*

**RULE 10 CONTINUED****NOTES ON RULE 10 continued****7. Offeror's receiving agent's certificate**

*Before an offer may become or be declared unconditional as to acceptances, the offeror's receiving agent must have issued a certificate to the offeror or its financial adviser which states the number of acceptances which have been received which comply with Note 4 on Rule 10 and the number of shares otherwise acquired, whether before or during an offer period, which comply with Note 5 on Rule 10 and, in each case, if appropriate, Note 6 on Rule 10, but which do not fall within Note 8 on Rule 10.*

*Copies of the receiving agent's certificate must be sent to the Panel and the offeree company's financial adviser by the offeror or its financial adviser as soon as possible after it is issued.*

**8. Borrowed shares**

*Except with the consent of the Panel, shares which have been borrowed by the offeror may not be counted towards fulfilling an acceptance condition.*

**RULE 11. NATURE OF CONSIDERATION TO BE OFFERED****11.1 WHEN A CASH OFFER IS REQUIRED**

Except with the consent of the Panel in cases falling under (a) or (b), a cash offer is required where:

(a) the shares of any class under offer in the offeree company in which interests are acquired for cash (but see Note 5) by an offeror and any person acting in concert with it during the offer period and within 12 months prior to its commencement carry 10% or more of the voting rights currently exercisable at a class meeting of that class, in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class acquired during the offer period and within 12 months prior to its commencement; or

(b) subject to paragraph (a) above, any interest in shares of any class under offer in the offeree company is acquired for cash (but see Note 5) by an offeror or any person acting in concert with it during the offer period, in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class acquired during the offer period; or

(c) in the view of the Panel there are circumstances which render such a course necessary in order to give effect to General Principle 1.

**NOTES ON RULE 11.1****1. Price**

*For the purpose of this Rule, the price paid for any acquisition of an interest in shares will be determined as follows:*

(a) *in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, his broker acting in an agency capacity) and the vendor (or principal trader) is struck;*

(b) *in the case of a call option which remains unexercised, the price paid will normally be treated as the middle market price of the shares which are the subject of the option at the time the option is entered into;*

(c) *in the case of a call option which has been exercised, the price paid will normally be treated as the amount paid on exercise of the option together with any amount paid by the option-holder on entering into the option;*

(d) *in the case of a written put option (whether exercised or not), the price paid will normally be treated as the amount paid or payable on exercise of the*

**RULE 11 CONTINUED****NOTES ON RULE 11.1 continued**

*option less any amount paid by the option-holder on entering into the option; and*

*(e) in the case of a derivative, the price paid will normally be treated as the initial reference price together with any fee paid on entering into the derivative.*

*In the case of an option or a derivative, however, if the option exercise price or derivative reference price is calculated by reference to the average price of a number of acquisitions by the counterparty of interests in underlying securities, the price paid will normally be determined to be the highest price at which such acquisitions are actually made.*

*Any stamp duty and broker's commission payable should be excluded.*

*The Panel should be consulted in advance if it is proposed to acquire the voting rights attaching to shares, or general control of them.*

*Where a person acquired an interest in shares more than 12 months prior to the commencement of the offer period as a result of any option, derivative or agreement to purchase and, during the offer period or within 12 months prior to its commencement, the person acquires any of the relevant shares, no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, if the terms of the instrument have been varied in any way, or if the shares are acquired other than on the terms of the original instrument, the Panel should be consulted.*

**2. Gross acquisitions**

*The Panel would normally regard Rule 11.1(a) as applying to the gross number of shares in which interests are acquired over the relevant period. Shares sold over that period or which are the subject of any short position should not normally be deducted. However, in exceptional circumstances and with the consent of the Panel, shares sold some considerable time before the beginning of the offer period (or shares which are the subject of any short position entered into some considerable time before the beginning of the offer period) may be deducted.*

**3. When the obligation is satisfied\***

*The obligation to make cash available under this Rule will be considered to have been met if, at the time the acquisition was made, a cash offer or cash alternative at a price per share not less than that required by this Rule was open for acceptance, even if that offer or alternative closes for acceptance immediately thereafter.*

*\*This Note is disapplied in a scheme.*

**RULE 11 CONTINUED****NOTES ON RULE 11.1 continued****4. Equality of treatment**

*The discretion given to the Panel in Rule 11.1(c) will not normally be exercised unless the vendors or other parties to the transactions giving rise to the interests are directors of, or other persons closely connected with, the offeror or the offeree company. In such cases, relatively small acquisitions could be relevant.*

*Rule 11.1(c) may also be relevant when interests in shares carrying 10% or more of the voting rights of a class have been acquired in the previous 12 months for a mixture of securities and cash. The Panel should be consulted in all relevant cases.*

**5. Acquisitions for securities**

*For the purpose of this Rule, interests in shares acquired by an offeror and any person acting in concert with it in exchange for securities, either during or in the 12 months preceding the commencement of the offer period, will normally be deemed to be acquisitions for cash on the basis of the value of the securities at the time of the purchase. However, if the vendor of the offeree company shares or other party to the transaction giving rise to the interest is required to hold the securities received or receivable in exchange until either the offer has lapsed or the offer consideration has been sent to accepting shareholders, no obligation under Rule 11.1 will be incurred.*

*See also Note 6 on Rule 11.2.*

**6. Revision**

*If an obligation under this Rule arises during the course of an offer period and a revision of the offer is necessary, an immediate announcement must be made by the offeror in accordance with Rule 7.1 (but see Rule 32).*

*The Note on Rule 7.1 may also be relevant to acquisitions by potential offerors.*

**7. Discretionary fund managers and principal traders**

*Dealings by non-exempt discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 7.2.*

**8. Allotted but unissued shares**

*When shares of a company carrying voting rights have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Panel should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under this Rule.*

**RULE 11 CONTINUED****NOTES ON RULE 11.1 continued****9. Cum dividend**

*When accepting shareholders are entitled under the offer to retain a dividend declared or forecast by the offeree company but not yet paid, the offeror, in establishing the level of the cash offer, may deduct from the highest price paid the net dividend to which offeree company shareholders are entitled. Where the offeror or any person acting in concert with it has acquired any interest in shares to which this Note may be relevant other than by purchasing shares, the Panel should be consulted.*

**10. Convertible securities, warrants and options**

*Acquisitions of securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares will normally only be relevant to this Rule if they are converted or exercised (as applicable). Such acquisitions will then be treated as if they were acquisitions of the underlying shares at a price calculated by reference to the acquisition price and the relevant conversion or exercise terms. In any case of doubt, the Panel should be consulted.*

**11. Offer period**

*References to the offer period in this Rule are to the time during which the offeree company is in an offer period, irrespective of whether the offeror was contemplating an offer when the offer period commenced.*

**12. Competition reference period**

*If an offer is announced pursuant to Rule 12.2(b)(ii), any acquisitions of interests in offeree company shares for cash during the competition reference period will be deemed to be acquisitions during the new offer period for the purposes of Rule 11.1(b).*

**11.2 WHEN A SECURITIES OFFER IS REQUIRED**

**Where interests in shares of any class of the offeree company carrying 10% or more of the voting rights currently exercisable at a class meeting of that class have been acquired by an offeror and any person acting in concert with it in exchange for securities in the three months prior to the commencement of and during the offer period, such securities will normally be required to be offered to all other holders of shares of that class.**

**Unless the vendor or other party to the transaction giving rise to the interest is required to hold the securities received or receivable until either the offer has lapsed or the offer consideration has been sent to accepting shareholders, an obligation to make an offer in cash or to provide a cash alternative will also arise under Rule 11.1.**

**RULE 11 CONTINUED****NOTES ON RULE 11.2****1. Basis on which securities are to be offered**

*Any securities required to be offered pursuant to this Rule must be offered on the basis of the same number of consideration securities received or receivable by the vendor or other party to the transaction giving rise to the interest for each offeree company share rather than on the basis of securities equivalent to the value of the securities received or receivable by the vendor or such other party at the time of the relevant purchase. Where there has been more than one relevant acquisition, offeror securities must be offered on the basis of the greater or greatest number of consideration securities received or receivable for each offeree company share.*

**2. Equality of treatment**

*The Panel may require securities to be offered on the same basis to all other holders of shares of that class even though the amount purchased is less than 10% or the purchase took place more than three months prior to the commencement of the offer period. However, this discretion will not, normally, be exercised unless the vendors of the relevant shares or other parties to the transactions giving rise to the interests are directors of, or other persons closely connected with, the offeror or the offeree company.*

**3. Vendor placings**

*Shares acquired in exchange for securities will normally be deemed to be acquisitions for cash for the purposes of this Rule if an offeror or any person acting in concert with it arranges the immediate placing of such consideration securities for cash, in which case no obligation to make a securities offer under this Rule will arise.*

**4. Management retaining an interest**

*See Note 2 on Rule 16.2.*

**5. Acquisitions for a mixture of cash and securities**

*The Panel should be consulted where interests in shares carrying 10% or more of the voting rights of a class have been acquired during the offer period and within 12 months prior to its commencement for a mixture of securities and cash.*

**6. Acquisitions in exchange for securities to which selling restrictions are attached**

*Where an offeror and any person acting in concert with it has acquired interests in shares carrying 10% or more of the voting rights of any class of*

**RULE 11 CONTINUED****NOTES ON RULE 11.2 continued**

*shares in the offeree company during the offer period and within 12 months prior to its commencement and the consideration received or receivable by the vendor or other party to the transaction giving rise to the interest includes shares to which selling restrictions of the kind set out in the second sentence of Rule 11.2 are attached, the Panel should be consulted.*

**7. Applicability of the Notes on Rule 11.1 to Rule 11.2**

*See Notes 2, 5, 6, 7, 8, 10 and 11 on Rule 11.1 which may be relevant.*

*In addition, if an offer is announced pursuant to Rule 12.2(b)(ii), any acquisitions of interests in offeree company shares for securities during the competition reference period will be deemed to be acquisitions during the new offer period for the purposes of this Rule.*

**11.3 DISPENSATION FROM HIGHEST PRICE**

**If the offeror considers that the highest price (for the purpose of Rules 11.1 and 11.2) should not apply in a particular case, the offeror should consult the Panel, which has discretion to agree an adjusted price.**

**NOTE ON RULE 11.3****Relevant factors**

*Factors which the Panel might take into account when considering an application for an adjusted price include:*

- (a) the size and timing of the relevant acquisitions;*
- (b) the attitude of the board of the offeree company;*
- (c) whether interests in shares had been acquired at high prices from directors or other persons closely connected with the offeror or the offeree company; and*
- (d) the number of shares in which interests have been acquired in the preceding 12 months.*

**RULE 12. THE CMA AND THE EUROPEAN COMMISSION****12.1 REQUIREMENT FOR APPROPRIATE TERM IN OFFER**

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

(i) in the case of a contractual offer, the offer will lapse if there is a Phase 2 CMA reference before the first closing date or the date when the offer becomes or is declared unconditional as to acceptances, whichever is the later; or

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

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

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

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

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

**NOTE ON RULE 12.1*****The effect of lapsing\****

*The offer document must make it clear that the reference to the offer lapsing means not only that the offer will cease to be capable of further acceptance but also that shareholders and the offeror will thereafter cease to be bound by prior acceptances.*

*\* This Note is disapplied in a scheme.*

**RULE 12 CONTINUED****12.2 COMPETITION REFERENCE PERIODS**

(a) When there is a Phase 2 CMA reference or Phase 2 European Commission proceedings are initiated, the offer period will end except in the following circumstances:

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

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

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

(i) during the competition reference period, except with the consent of the Panel, neither the offeror, nor any person who acted in concert with the offeror in relation to the referred offer or possible offer, nor any person who is subsequently acting in concert with any of them may:

(A) announce an offer or possible offer for the offeree company (including a partial offer which could result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of the offeree company);

(B) acquire any interest in shares of the offeree company if the offeror or any such person would thereby become obliged under Rule 9 to make an offer;

(C) acquire an interest in, or procure an irrevocable commitment in respect of, shares of the offeree company if the shares in which such person, together with any persons acting in concert with him, would be interested and the shares in respect of which he, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the voting rights of the offeree company;

(D) make any statement which raises or confirms the possibility that an offer might be made for the offeree company; or

(E) take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the offeror and its immediate advisers;

(ii) at the end of the competition reference period, if the offer is allowed to proceed (whether conditionally or unconditionally):

**RULE 12 CONTINUED**

(A) any cleared offeror or potential offeror must, normally within 21 days of the offer's being allowed to proceed, clarify its intentions with regard to the offeree company by making an announcement either of a firm intention to make an offer for the offeree company in accordance with Rule 2.7 or that it does not intend to make an offer for the offeree company, in which latter case the announcement will be treated as a statement to which Rule 2.8 applies; and

(B) a new offer period will begin and, if no announcement of a new offer is made within the 21 day period referred to above, will end when each cleared offeror or potential offeror has announced that it does not intend to make an offer; and

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

**NOTES ON RULE 12.2****1. Certain restrictions disappplied while clearance is being sought**

*The restrictions in Rule 12.2(b)(i)(D) and (E) will not normally apply to the extent that the offeror is continuing to seek clearance or a decision from the relevant authority with a view subsequently to making a new offer in accordance with Rule 12.2(b)(ii)(A).*

*NB Rule 2.2(e) will continue to apply in these circumstances.*

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

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

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

*When an offer was announced subject to a pre-condition as permitted under Rule 13.3(b) and either a Phase 2 CMA reference is made or Phase 2 European Commission proceedings are initiated, the offer period will not end.*

**RULE 12 CONTINUED****NOTES ON RULE 12.2 continued**

*However, during the competition reference period, the Panel may grant a dispensation from a particular Rule if it would be proportionate in the circumstances to do so.*

**4. Offerors and potential offerors who decide not to pursue clearance or a decision from the relevant authority**

*Following the commencement of a competition reference period, if an offeror or potential offeror decides not to pursue clearance or a decision from the relevant authority, it must announce its decision and that it does not intend to make an offer for the offeree company. Such an announcement will be treated as a statement to which Rule 2.8 applies; the competition reference period will end on the date of the announcement and no new offer period will begin.*

## **RULE 13. PRE-CONDITIONS IN FIRM OFFER ANNOUNCEMENTS AND OFFER CONDITIONS**

### **13.1 SUBJECTIVITY**

An offer must not normally be subject to conditions or pre-conditions which depend solely on subjective judgements by the offeror or the offeree company (as the case may be) or, in either case, its directors or the fulfilment of which is in their hands. The Panel may be prepared to accept an element of subjectivity in certain circumstances where it is not practicable to specify all the factors on which satisfaction of a particular condition or pre-condition may depend, especially in cases involving official authorisations or regulatory clearances, the granting of which may be subject to additional material obligations for the offeror or the offeree company (as the case may be).

### **13.2 THE CMA AND THE EUROPEAN COMMISSION**

Neither a condition included pursuant to Rule 12.1(c) nor a pre-condition included pursuant to Rule 13.3(a) or (b) will be subject to the provisions of Rules 13.1 or 13.5(a).

### **13.3 ACCEPTABILITY OF PRE-CONDITIONS**

The Panel must be consulted in advance if a person proposes to include in an announcement any pre-condition to which the making of an offer will be subject.

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

- (a) relates to a decision that there will be no Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings;
- (b) relates to a decision that there will be no Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings or, if there is such a reference or initiation of proceedings, a decision by the relevant authority to allow the offer to proceed (the decision may, in each case, be stated to be on terms satisfactory to the offeror); or
- (c) involves another material official authorisation or regulatory clearance relating to the offer and:
  - (i) the offer is publicly recommended by the board of the offeree company; or
  - (ii) the Panel is satisfied that it is likely to prove impossible to obtain the authorisation or clearance within the Code timetable.

(See Note 2 on Rule 2.7.)

**RULE 13 CONTINUED****13.4 FINANCING CONDITIONS AND PRE-CONDITIONS**

(a) Subject to Rules 13.4(b) and (c), an offer must not be made subject to a condition or pre-condition relating to financing.

(b) Where the offer is for cash, or includes an element of cash, and the offeror proposes to finance the cash consideration by an issue of new securities, the offer must be made subject to any condition required, as a matter of law or regulatory requirement, in order validly to issue such securities or to have them listed or admitted to trading. Conditions which will normally be considered necessary for such purposes include:

(i) the passing of any resolution necessary to create or allot the new securities and/or to allot the new securities on a non-pre-emptive basis (if relevant); and

(ii) where the new securities are to be admitted to listing or to trading on any investment exchange or market, any necessary listing or admission to trading condition (see also Rule 24.10).

Such conditions must not be waivable and the Panel must be consulted in advance.

(c) In exceptional cases, the Panel may be prepared to accept a pre-condition relating to financing either in addition to another pre-condition permitted by Rule 13.3 or otherwise, for example where, due to the likely period required to obtain any necessary material official authorisation or regulatory clearance, it is not reasonable for the offeror to maintain committed financing throughout the offer period. In such a case:

(i) the financing pre-condition must be satisfied (or waived), or the offer must be withdrawn, within 21 days after the satisfaction (or waiver) of any other pre-condition or pre-conditions permitted by Rule 13.3; and

(ii) the offeror and its financial adviser must confirm in writing to the Panel before announcement of the offer that they are not aware of any reason why the offeror would be unable to satisfy the financing pre-condition within that 21 day period.

(d) If, at any time, the offeror or its financial adviser becomes aware, or considers it likely, that the offeror would be unable to satisfy a financing pre-condition, it must promptly notify the Panel.

**13.5 INVOKING CONDITIONS AND PRE-CONDITIONS**

(a) An offeror should not invoke any condition or pre-condition so as to cause the offer not to proceed, to lapse or to be withdrawn unless the circumstances which give rise to the right to invoke the condition or

**RULE 13 CONTINUED**

pre-condition are of material significance to the offeror in the context of the offer. The acceptance condition is not subject to this provision.

(b) Following the announcement of a firm intention to make an offer, an offeror should use all reasonable efforts to ensure the satisfaction of any conditions or pre-conditions to which the offer is subject.

**13.6 INVOKING OFFEREE PROTECTION CONDITIONS**

An offeree company should not invoke, or cause or permit the offeror to invoke, any condition to an offer unless the circumstances which give rise to the right to invoke the condition are of material significance to the shareholders in the offeree company in the context of the offer.

**NOTES ON RULE 13.6****1. When an offeree protection condition may be invoked**

*The circumstances in which the offeree company will be allowed to invoke, or cause or permit the offeror to invoke, a condition will not necessarily be restricted to those in which the Panel would permit an offeror to invoke a condition. In deciding whether an offeree company may invoke, or cause or permit the offeror to invoke, a condition, the Panel will take into account all relevant factors.*

**2. Availability of withdrawal rights\***

*If the offeree company is not permitted to invoke, or to cause or permit the offeror to invoke, a condition, the Panel may instead determine in the light of all relevant facts that accepting shareholders should have the right to withdraw their acceptances on such terms as the Panel considers appropriate and, if so, the effect of this on the Code timetable. The ability of the Panel to require the introduction of withdrawal rights in such circumstances and to amend the Code timetable, and also the fact that the offer may cease to be unconditional as to acceptances as a result of such withdrawal rights being introduced, should be incorporated into the terms of the offer.*

\* This Note is disapplied in a scheme.

## **SECTION H. PROVISIONS APPLICABLE TO ALL OFFERS**

### **RULE 14. WHERE THERE IS MORE THAN ONE CLASS OF SHARE CAPITAL**

#### **14.1 COMPARABLE OFFERS**

Where a company has more than one class of equity share capital, a comparable offer must be made for each class whether such capital carries voting rights or not; the Panel should be consulted in advance. An offer for non-voting equity share capital should not be made conditional on any particular level of acceptances in respect of that class, or on the approval of that class, unless the offer for the voting equity share capital is also conditional on the success of the offer for the non-voting equity share capital. Classes of non-voting, non-equity share capital need not be the subject of an offer, except in the circumstances referred to in Rule 15.

#### **NOTES ON RULE 14.1**

##### **1. Comparability**

*A comparable offer need not necessarily be an identical offer.*

*In the case of offers involving two or more classes of equity share capital, prices for all of which are published in the Daily Official List, the ratio of the offer values should normally be equal to the average of the ratios of the middle market quotations taken from the Daily Official List over the course of the six months preceding the commencement of the offer period. The Panel will not normally permit the use of any other ratio unless the advisers to the offeror and offeree company are jointly able to justify it.*

*In any other case, the ratio of the offer values must be justified to the Panel in advance.*

##### **2. Offer for non-voting shares only**

*Where an offer for non-voting shares only is being made, comparable offers for voting classes are not required.*

##### **3. Treatment of certain classes of share capital**

*For the purpose of this Rule, the Panel may not regard as equity share capital certain classes of shares which, although equity share capital under the Companies Act 2006, have in practice very limited equity rights. In appropriate cases, the Panel should be consulted.*

#### **14.2 SEPARATE OFFERS FOR EACH CLASS**

Where an offer is made for more than one class of share, separate offers must be made for each class.

**RULE 15. APPROPRIATE OFFER FOR CONVERTIBLES ETC.**

(a) When an offer is made for voting equity share capital or for other transferable securities carrying voting rights and the offeree company has convertible securities outstanding, the offeror must make an appropriate offer or proposal to the stockholders to ensure that their interests are safeguarded. Equality of treatment is required.

(b) The board of the offeree company must obtain competent independent advice on the offer or proposal to the stockholders and the substance of such advice must be made known to its stockholders, together with the board's views on the offer or proposal.

(c) Whenever practicable, the offer or proposal should be sent to stockholders at the same time as the offer document is published but, if this is not practicable, the Panel should be consulted and the offer or proposal should be sent as soon as possible thereafter. A copy of the offer or proposal should be sent to the Panel at the time of publication.

(d) The offer or proposal to stockholders required by this Rule should not normally be made conditional on any particular level of acceptances. It may, however, be put by way of a scheme to be considered at a stockholders' meeting provided that, if the scheme is not approved at that meeting, or is not sanctioned by the court, the offeror shall immediately make an offer or proposal to stockholders which is not conditional on any particular level of acceptances or approval.

(e) If an offeree company has options or subscription rights outstanding, the provisions of this Rule apply *mutatis mutandis*.

**NOTES ON RULE 15****1. When conversion rights etc. are exercisable during an offer**

*All relevant documents, announcements and other information sent to shareholders of the offeree company and persons with information rights in connection with an offer must also, where practicable, be sent simultaneously to the holders of securities convertible into, rights to subscribe for and options over shares of the same class as those to which the offer relates. If those holders are able to exercise their rights during the course of the offer and to accept the offer in respect of the resulting shares, their attention should, where appropriate, be drawn to this in the relevant documents, announcements and other information.*

**2. Rules 9 and 14**

*If an offer for any convertible securities is required by Rule 9 or Rule 14, compliance with the relevant Rule will be regarded as satisfying the obligation in Rule 15(a) in respect of those securities.*

## **RULE 16. SPECIAL DEALS AND MANAGEMENT INCENTIVISATION**

### **16.1 SPECIAL DEALS WITH FAVOURABLE CONDITIONS**

Except with the consent of the Panel, an offeror or persons acting in concert with it may not make any arrangements with shareholders and may not deal or enter into arrangements to deal in shares of the offeree company, or enter into arrangements which involve acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders.

An arrangement made with a person who, while not a shareholder, is interested in shares carrying voting rights in the offeree company will also be prohibited by this Rule if favourable conditions are attached which are not being extended to the shareholders. For the avoidance of doubt, there is no requirement to extend an offer or any arrangement which would otherwise be prohibited by this Rule to any person who is interested in shares, but is not a shareholder.

(See also Rule 35.3.)

#### **NOTES ON RULE 16.1**

##### **1. Top-ups and other arrangements**

*An arrangement to deal with favourable conditions attached includes any arrangement where there is a promise to make good to a vendor of shares any difference between the sale price and the price of any subsequent successful offer. An irrevocable commitment to accept an offer combined with an option to put the shares should the offer fail will also be regarded as such an arrangement.*

*Arrangements made by an offeror with a person acting in concert with it, whereby an interest in offeree company shares is acquired by the person acting in concert on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Panel must be consulted.*

##### **2. Offeree company shareholders' approval of certain transactions – eg disposal of offeree company assets**

*In some cases, certain assets of the offeree company may be of no interest to the offeror. There is a possibility if a person interested in shares in the offeree company seeks to acquire the assets in question that the terms of the transaction will be such as to confer a special benefit on him; in any event, the arrangement is not capable of being extended to all shareholders. The Panel will normally consent to such a transaction, provided that the independent adviser to the offeree company publicly states that in his opinion the terms of the transaction are fair and reasonable and the transaction is*

**RULE 16 CONTINUED****NOTES ON RULE 16.1 continued**

*approved at a general meeting of the offeree company's shareholders. At this meeting the vote must be a separate vote of independent shareholders and must be taken on a poll. Where a sale of assets takes place after the offer has become unconditional, the Panel will be concerned to see that there was no element of pre-arrangement in the transaction.*

*The Panel will consider allowing such a procedure in respect of other transactions where the issues are similar, eg a transaction with an offeree company shareholder involving offeror assets.*

**3. Finders' fees**

*This Rule also covers cases where a person interested in shares in an offeree company is to be remunerated for the part that he has played in promoting the offer. The Panel will normally consent to such remuneration, provided that the interest in shares is not substantial and it can be demonstrated that a person who had performed the same services, but had not at the same time been interested in offeree company shares, would have been entitled to receive no less remuneration.*

**16.2 MANAGEMENT INCENTIVISATION**

**(a) Except with the consent of the Panel, where an offeror has:**

- (i) entered into; or**
- (ii) reached an advanced stage of discussions on proposals to enter into**

**any form of incentivisation arrangements with members of the offeree company's management who are interested in shares in the offeree company, relevant details of the arrangements or proposals must be disclosed and the independent adviser to the offeree company must state publicly that in its opinion the arrangements are fair and reasonable. If it is intended to put incentivisation arrangements in place following completion of the offer, but either no discussions or only limited discussions have taken place, this fact must be stated publicly and relevant details of the discussions disclosed. Where no incentivisation arrangements are proposed, this must be stated publicly.**

**(b) Where the value of arrangements entered into or proposed to be entered into is significant and/or the nature of the arrangements is unusual either in the context of the relevant industry or good practice, the Panel must be consulted and its consent to the arrangements obtained. The Panel may also require, as a condition of its consent, that the arrangements be approved at a general meeting of the offeree company's shareholders.**

**RULE 16 CONTINUED**

(c) Where the members of the management are shareholders in the offeree company and, as a result of the incentivisation arrangements, they will become shareholders in the offeror on a basis that is not being made available to all other offeree company shareholders, such arrangements must be approved at a general meeting of the offeree company's shareholders.

(d) Any approval as required by paragraph (b) or (c) above must be by a separate vote of independent shareholders, taken on a poll.

**NOTES ON RULE 16.2****1. Rule 15**

*Where members of the management of the offeree company are to receive offeror securities pursuant to an appropriate offer or proposal made in accordance with Rule 15, Rule 16.2(a) and (b) will apply, but shareholder approval will not normally be required under this Rule in respect of such offer or proposal.*

**2. Management retaining an interest**

*If the only shareholders in the offeree company who receive offeror securities are members of the management of the offeree company, the Panel will not, so long as the requirements of this Rule are complied with, require all offeree shareholders to be offered offeror securities pursuant to Rule 11.2, even though such members of the management of the offeree company propose to sell, in exchange for offeror securities, more than 10% of the offeree company's shares.*

**3. Where incentivisation arrangements are put in place following the offer being made or the proposed arrangements are amended**

*Where, following the offer document being published, there is a change in the terms of any agreed or proposed management incentivisation arrangements or the offeror enters into, or reaches an advanced stage of discussion on proposals to enter into any form of management incentivisation arrangements, the Panel must be consulted. The Panel may require details of the changes to the arrangements or status of the discussions to be disclosed, the independent adviser to state publicly that in its opinion the arrangements are fair and reasonable and, if appropriate, a separate vote of independent shareholders to be held to approve the arrangements.*

**4. Incentivisation of members of management who are not interested in shares in the offeree company**

*Where members of management who are not interested in shares in the offeree company are to be offered significant and/or unusual incentivisation arrangements by the offeror, the Panel must be consulted.*

**RULE 17. ANNOUNCEMENT OF ACCEPTANCE LEVELS\*****17.1 TIMING AND CONTENTS**

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

(a) the number of shares for which acceptances of the offer have been received, specifying the extent to which acceptances have been received from persons acting in concert with the offeror or in respect of shares which were subject to an irrevocable commitment or a letter of intent procured by the offeror or any person acting in concert with the offeror;

(b) 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 he 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 or any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

(c) details of any relevant securities of the offeree company in respect of which the offeror or any person acting in concert with it has an outstanding irrevocable commitment or letter of intent (see Note 3 on Rule 2.11); and

(d) 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 shares which have been either on-lent or sold,

and must specify the percentages of each class of relevant securities represented by these figures. (See also Rule 31.2.)

Any announcement made pursuant to this Rule must include a prominent statement of the total numbers of shares which the offeror may count towards the satisfaction of its acceptance condition and must specify the percentages of each class of relevant securities represented by these figures. The Panel should be consulted if the offeror wishes to make any other statement about acceptance levels in any announcement made pursuant to this Rule.

**NOTES ON RULE 17.1****1. *Acceptances of cash underwritten alternatives***

*Acceptances of cash underwritten alternatives do not come within this Rule.*

*\*This Rule is disapplied in a scheme.*

**RULE 17 CONTINUED****NOTES ON RULE 17.1 continued****2. General statements about acceptance levels**

*If, during an offer, any statements, either oral or in writing, are made by an offeror or its advisers about the level of acceptances of the offer or the number or percentage of shareholders who have accepted the offer, an immediate announcement must be made in conformity with this Rule.*

**3. Alternative offers**

*An announcement under this Rule is also required on the business day following the day on which an alternative offer is due to expire, even if the offer itself is not due to expire at that time.*

**4. Publication of announcements**

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

**5. Statements about withdrawals**

*When the offeree company is proposing to draw attention to withdrawals of acceptance, the Panel must be consulted before any announcement is made.*

**6. Incomplete acceptances and offeror purchases**

*Acceptances not complete in all respects and purchases must only be included in the statement required under this Rule of the total number of shares which the offeror may count towards the satisfaction of its acceptance condition where they could be counted towards fulfilling an acceptance condition under Notes 4, 5 and 6 on Rule 10.*

**17.2 CONSEQUENCES OF FAILURE TO ANNOUNCE**

**(a)** If an offeror, having announced the offer to be unconditional as to acceptances, fails by 3.30 pm on the relevant day to comply with any of the requirements of Rule 17.1, immediately thereafter any acceptor will be entitled to withdraw his acceptance. Subject to Rule 31.6, this right of withdrawal may be terminated not less than 8 days after the relevant day by the offeror confirming, if such is the case, that the offer is still unconditional as to acceptances and complying with Rule 17.1.

**(b)** For the purpose of Rule 31.4, the offer must remain open for acceptance for not less than 14 days after the date of such confirmation and compliance.

**RULE 18. THE USE OF PROXIES AND OTHER AUTHORITIES  
IN RELATION TO ACCEPTANCES\***

An offeror may not require a shareholder as a term of his acceptance of an offer to appoint a proxy to vote in respect of his shares in the offeree company or to exercise any other rights or take any other action in relation to those shares unless the appointment is on the following terms, which must be set out in the offer document:

- (a) the proxy may not vote, the rights may not be exercised and no other action may be taken unless the offer is wholly unconditional or, in the case of voting by the proxy, the resolution in question concerns the last remaining condition of the offer (other than any condition covered by Rule 24.10) and the offer will become wholly unconditional (save, where relevant, for the satisfaction of any condition covered by Rule 24.10) or lapse depending upon the outcome of that resolution;
- (b) where relevant, the votes are to be cast as far as possible to satisfy any outstanding condition of the offer;
- (c) the appointment ceases to be valid if the acceptance is withdrawn; and
- (d) the appointment applies only to shares assented to the offer.

*\*This Rule is disapplied in a scheme.*

## SECTION I. CONDUCT DURING THE OFFER

### RULE 19. INFORMATION

#### 19.1 STANDARDS OF CARE

Each document or advertisement published, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy and the information given must be adequately and fairly presented. This applies whether it is published by the party directly or by an adviser on its behalf.

#### NOTES ON RULE 19.1

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

*The Panel regards financial advisers as being responsible to the Panel for guiding their clients and any relevant public relations advisers with regard to any information published during the course of an offer.*

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

##### 2. *Unambiguous language*

*The language used in documents, announcements, information, releases or advertisements must clearly and concisely reflect the position being described. In particular, the word "agreement" must be used with the greatest care. Statements must be avoided which may give the impression that persons have committed themselves to certain courses of action (eg accepting in respect of their own shares) when they have not in fact done so.*

##### 3. *Statements of intention*

*If a party to an offer makes a statement in any document, announcement or other information published in relation to an offer relating to any particular course of action it intends to take, or not take, after the end of the offer period, that party will be regarded as being committed to that course of action for a period of 12 months from the date on which the offer period ends, or such other period of time as is specified in the statement, unless there has been a material change of circumstances.*

**RULE 19 CONTINUED****NOTES ON RULE 19.1 continued****4. Sources**

*The source for any fact which is material to an argument must be clearly stated, including sufficient detail to enable the significance of the fact to be assessed; however, if the information has been included in a document previously sent to shareholders, an appropriate cross reference may be made.*

**5. Quotations**

*A quotation (for example, from a newspaper or 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.*

*Since the use of a quotation will carry the implication that the quotation is endorsed by the party to the offer using it, quotations must not be used unless the party is prepared, where appropriate, to corroborate or substantiate them and they are covered by the directors' responsibility statement. See also Note 6 on Rule 28.1 with regard to investment analyst and other third party forecasts.*

**6. Diagrams etc.**

*Pictorial representations, charts, graphs and diagrams must be presented without distortion and, when relevant, must be to scale.*

**7. Use of other media**

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

**8. FSMA and the Financial Services Act 2012**

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

**19.2 RESPONSIBILITY**

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

- (i) advertisements falling within paragraphs (i), (ii) or (viii) of Rule 19.4;**

**RULE 19 CONTINUED**

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

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

(b) If it is proposed that any director should be excluded from such a statement, the Panel's consent is required. Such consent is given only in exceptional circumstances and in such cases the omission and the reasons for it must be stated in the document or advertisement.

**NOTES ON RULE 19.2****1. Delegation of responsibility**

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

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

**2. Expressions of opinion**

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

**3. Quoting information about another party**

*Where a party publishes a document or advertisement containing information about another party which makes it clear that such information has been compiled from previously published sources, the directors of the party publishing the document or advertisement need, as regards the information so compiled, only take responsibility for the correctness and fairness of its reproduction or presentation and the responsibility statement may be*

**RULE 19 CONTINUED****NOTES ON RULE 19.2 continued**

*amended accordingly. Where statements of opinion or conclusions concerning another party or unpublished information originating from another party are included, these must normally be covered by a responsibility statement by the directors of the party publishing the document or advertisement or by the directors of the other party; the qualified form of responsibility statement provided for in this Note is not acceptable in such instances. However, where a responsibility statement relates to a prospectus or an equivalent document, the provisions of the UKLA Rules may affect the form of responsibility statement required.*

**4. Exclusion of directors**

*Although the Panel may be willing to consider the exclusion of a director from the responsibility statement in appropriate circumstances, where that statement relates to a prospectus or an equivalent document the provisions of the UKLA Rules may affect the position.*

**5. When an offeror is controlled**

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

**19.3 UNACCEPTABLE STATEMENTS**

**Parties to an offer and their advisers must take care not to make statements which, while not factually inaccurate, may be misleading or may create uncertainty. In particular, an offeror must not make a statement to the effect that it may improve its offer, or that it may make a change to the structure, conditionality or the non-financial terms of its offer, without committing itself to doing so and specifying the improvement or change. In the case of any doubt as to the application of this Rule to a proposed statement, parties to an offer and their advisers should consult the Panel.**

**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*

**RULE 19 CONTINUED****NOTES ON RULE 19.3 continued**

*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 of an offer or possible offer which is published no later than 12 noon on the business day following the date on which the letter of intent is procured.*

**19.4 ADVERTISEMENTS**

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

The categories are as follows:

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

**RULE 19 CONTINUED****NOTES ON RULE 19.4****1. Clearance**

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

**2. Verification**

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

**3. Source**

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

**4. Use of other media**

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

**5. Forms**

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

**19.5 TELEPHONE CAMPAIGNS**

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

**NOTES ON RULE 19.5****1. Consent to use other callers**

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

- (a) an appropriate script for callers being approved by the Panel;*
- (b) the financial adviser carefully briefing the callers prior to the start of the operation and, in particular, stressing:*

**RULE 19 CONTINUED****NOTES ON RULE 19.5 continued**

- (i) that callers must not depart from the script;
  - (ii) that callers must decline to answer questions the answers to which fall outside the information given in the script; and
  - (iii) the callers' responsibilities under General Principle 1 and Rule 20.1; and
- (c) the operation being supervised by the financial adviser.

**2. New information**

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

**3. Gathering of irrevocable commitments**

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

**4. Statutory and other regulatory provisions**

*Those communicating information falling within this Rule must also take account of the provisions of Section 21 of the FSMA (restrictions on financial promotion) and, where relevant, the provisions of the FCA's conduct of business rules.*

*Any view expressed by the Panel in relation to the telephoning of shareholders or other persons interested in shares can only relate to the Code and must not be taken to extend to any other regulatory requirement, for example the provisions of the FSMA or the FCA's conduct of business rules.*

**19.6 INTERVIEWS AND DEBATES**

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

**RULE 19 CONTINUED****19.7 INFORMATION PUBLISHED FOLLOWING THE ENDING OF AN OFFER PERIOD PURSUANT TO RULE 12.2**

The requirements of the Code relating to the publication of information do not normally apply once an offer period has ended pursuant to Rule 12.2(a). However, if thereafter the merger is allowed and, as a result, the offeror announces a further offer, the Panel may require that statements (including valuations of assets) made during the competition reference period be substantiated or, if this is not possible, withdrawn. Consequently, the parties to an offer must take care to ensure that any statements made during the competition reference period are capable of substantiation.

## **RULE 20. EQUALITY OF INFORMATION**

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

Information about parties to an offer must be made equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner.

#### **NOTES ON RULE 20.1**

##### **1. Furnishing of information to offerors**

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

##### **2. Media interviews**

*Parties to an offer must take particular care not to disclose new material in interviews or discussions with the media. If, notwithstanding this Note, any new information is published as a result of such an interview or discussion, an announcement giving all relevant details must be made as soon as possible thereafter (see also Note 1 on Rule 19.1). Where appropriate, the Panel may, in addition, require a document to be sent to shareholders and persons with information rights and made readily available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s).*

##### **3. Meetings**

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

*If, notwithstanding the above, any material new information or significant new opinion does emerge at the meeting, an announcement giving all relevant details must be made as soon as possible thereafter. Where appropriate, the Panel may, in addition, require a document to be sent to shareholders and persons with information rights and made readily available to the offeree company's employee representatives (or, where there are no employee*

**RULE 20 CONTINUED****NOTES ON RULE 20.1 continued**

*representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s). If such new information or opinion is not capable of being substantiated as required by the Code (for example, a profit forecast), this must be made clear and it must be formally withdrawn.*

*In the case of any meeting held prior to the offer period, the representative should confirm that no material new information was forthcoming and no significant new opinions were expressed at the meeting which will not be included in the announcement of the offer to be made under Rule 2.7, if and when such announcement is made.*

*Should there be any dispute as to whether the provisions of this Note have been complied with, the relevant financial adviser or corporate broker will be expected to satisfy the Panel that they have been. Financial advisers or corporate brokers may, therefore, find it useful to record the proceedings of meetings, although this is not a requirement. The financial adviser must ensure that no meetings are arranged without its knowledge.*

*The above provisions apply to all such meetings held prior to or during an offer period wherever they take place and even if with only one person or firm, unless the meetings take place by chance.*

**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 document or the offeree board circular contains such forecasts, statements, valuations or estimates). The status of the person issuing the circular as a person acting in concert with the offeree company or an offeror must be clearly disclosed.*

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

**RULE 20 CONTINUED****NOTES ON RULE 20.1 continued****5. Shareholders and persons with information rights outside the EEA**

See the Note on Rule 23.2.

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

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

(a) an offeror or the offeree company to their employee representatives (or employees) or to the trustees of their pension scheme(s); or

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

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

Meetings with employee representatives (or employees) or pension scheme trustees acting in their capacity as such, both prior to and during the offer period, are not normally covered by Note 3 on Rule 20.1, although the Panel should be consulted if any employee or pension scheme trustee is interested in a significant number of shares.

**20.2 EQUALITY OF INFORMATION TO COMPETING OFFERORS**

Any information given to one offeror or potential offeror, whether publicly identified or not, must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome. This requirement will usually only apply when there has been a public announcement of the existence of the offeror or potential offeror to which information has been given or, if there has been no public announcement, when the offeror or bona fide potential offeror requesting information under this Rule has been informed authoritatively of the existence of another potential offeror.

**NOTES ON RULE 20.2****1. General enquiries**

The less welcome offeror or potential offeror should specify the questions to which it requires answers. It is not entitled, by asking in general terms, to receive all the information supplied to its competitor.

**2. Conditions attached to the passing of information**

The passing of information pursuant to this Rule should not be made subject to any conditions other than those relating to: the confidentiality of the information passed; reasonable restrictions forbidding the use of the information passed

**RULE 20 CONTINUED****NOTES ON RULE 20.2 continued**

*to solicit customers or employees; and, the use of the information solely in connection with an offer or potential offer. Any such conditions imposed should be no more onerous than those imposed upon any other offeror or potential offeror.*

*A requirement that a party sign a hold harmless letter in favour of a firm of accountants or other third party will normally be acceptable provided that any other offeror or potential offeror has been required to sign a letter in similar form.*

**3. Management buy-outs**

*If the offer or potential offer is a management buy-out or similar transaction, the information which this Rule requires to be given to competing offerors or potential offerors is that information generated by the offeree company (including the management of the offeree company acting in their capacity as such) which is passed to external providers or potential providers of finance (whether equity or debt) to the offeror or potential offeror. The Panel expects the directors of the offeree company who are involved in making the offer to co-operate with the independent directors of the offeree company and its advisers in the assembly of this information.*

**4. Mergers and reverse takeovers**

*Where an offer or possible offer is a reverse takeover, an offeror or potential offeror for either party to such an offer or possible offer will be entitled to receive information which has been given by such party to the other party.*

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

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

**20.3 INFORMATION TO INDEPENDENT DIRECTORS IN MANAGEMENT BUY-OUTS**

**If the offer or potential offer is a management buy-out or similar transaction, the offeror or potential offeror must, on request, promptly furnish the independent directors of the offeree company or its advisers with all information which has been furnished by the offeror or potential offeror to external providers or potential providers of finance (whether equity or debt) for the buy-out.**

## **RULE 21. RESTRICTIONS ON FRUSTRATING ACTION**

### **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:

- (a) take any action which may result in any offer or bona fide possible offer being frustrated or in shareholders being denied the opportunity to decide on its merits; or
- (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;
  - (ii) issue or grant options in respect of any unissued shares;
  - (iii) create or issue, or permit the creation or issue of, any securities carrying rights of conversion into or subscription for shares;
  - (iv) sell, dispose of or acquire, or agree to sell, dispose of or acquire, assets of a material amount; or
  - (v) enter into contracts otherwise than in the ordinary course of business.

The Panel must be consulted in advance if there is any doubt as to whether any proposed action may fall within this Rule.

The notice convening any relevant meeting of shareholders must include information about the offer or anticipated offer.

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.

**RULE 21 CONTINUED****NOTES ON RULE 21.1****1. Consent by the offeror**

*Where the Rule would otherwise apply, it will nonetheless normally be waived by the Panel if this is acceptable to the offeror.*

**2. "Material amount"**

*For the purpose of determining whether a disposal or acquisition is of "a material amount" the Panel will, in general, have regard to the following:*

- (a) the aggregate value of the consideration to be received or given compared with the aggregate market value of all the equity shares of the offeree company; and, where appropriate:*
- (b) the value of the assets to be disposed of or acquired compared with the assets of the offeree company; and*
- (c) the operating profit (ie profit before tax and interest and excluding exceptional items) attributable to the assets to be disposed of or acquired compared with that of the offeree company.*

*For these purposes:*

*"assets" will normally mean total assets less current liabilities (other than short-term indebtedness); and*

*"equity" will be interpreted by reference to Note 3 on Rule 14.1.*

*The figures to be used for these calculations must be:*

- (a) for market value of the shares of the offeree company, the aggregate market value of all the equity shares of the company at the close of business either:
 
  - (i) on the last day immediately preceding the start of the offer period; or*
  - (ii) if there is no offer period, on the last day immediately preceding the announcement of the transaction; and**
- (b) for assets and profits, the figures shown in the latest published audited consolidated accounts or, where appropriate, interim or preliminary statements.*

*Subject to Note 4, the Panel will normally consider relative values of 10% or more as being of a material amount, although relative values lower than 10% may be considered material if the asset is of particular significance.*

**RULE 21 CONTINUED****NOTES ON RULE 21.1 continued**

*If several transactions relevant to this Rule, but not individually material, occur or are intended, the Panel will aggregate such transactions to determine whether the requirements of this Rule are applicable to any of them.*

*The Panel should be consulted in advance where there may be any doubt as to the application of the above.*

**3. Interim dividends**

*The declaration and payment of an interim dividend by the offeree company, otherwise than in the normal course, during an offer period may in certain circumstances be contrary to General Principle 3 and this Rule in that it could effectively frustrate an offer. Offeree companies and their advisers must, therefore, consult the Panel in advance.*

**4. The CMA and the European Commission**

*When a Phase 2 CMA reference is made or Phase 2 European Commission proceedings are initiated, the offer period may end in accordance with Rule 12.2(a). The Panel will, however, normally consider that General Principle 3 and Rule 21.1 apply during the competition reference period, but on a more flexible basis. For example, issues of shares, which do not increase the equity share capital or the share capital carrying voting rights as at the end of the offer period by, in aggregate, more than 15%, would normally not be restricted; and for the purpose of Note 2, a 15% rather than a 10% test would normally be applied.*

**5. Service contracts**

*The Panel will regard amending or entering into a service contract with, or creating or varying the terms of employment of, a director as entering into a contract “otherwise than in the ordinary course of business” for the purpose of this Rule if the new or amended contract or terms constitute an abnormal increase in the emoluments or a significant improvement in the terms of service.*

*This will not prevent any such increase or improvement which results from a genuine promotion or new appointment but the Panel must be consulted in advance in such cases.*

**6. Established share option schemes**

*Where the offeree company proposes to grant options over shares, the timing and level of which are in accordance with its normal practice under an*

**RULE 21 CONTINUED****NOTES ON RULE 21.1 continued**

*established share option scheme, the Panel will normally give its consent. Likewise, the Panel will normally give its consent to the issue of new shares or to the transfer of shares from treasury to satisfy the exercise of options under an established share option scheme.*

**7. Pension schemes**

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

**8. Shares carrying more than 50% of the voting rights**

*The Panel will normally waive the requirement for a general meeting under this Rule where the holders of shares carrying more than 50% of the voting rights state in writing that they approve the action proposed and would vote in favour of any resolution to that effect proposed at a general meeting.*

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

**(a) Except with the consent of the Panel, neither the offeree company nor any person acting in concert with it may enter into any offer-related arrangement with either the offeror or any person acting in concert with it during an offer period or when an offer is reasonably in contemplation.**

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

- (i) a commitment to maintain the confidentiality of information provided that it does not include any other provisions prohibited by Rules 21.2(a) or 2.3(d) or otherwise under the Code;**
- (ii) a commitment not to solicit employees, customers or suppliers;**
- (iii) a commitment to provide information or assistance for the purposes of obtaining any official authorisation or regulatory clearance;**
- (iv) irrevocable commitments and letters of intent;**

**RULE 21 CONTINUED**

(v) any agreement, arrangement or commitment which imposes obligations only on an offeror or any person acting in concert with it, other than in the context of a reverse takeover;

(vi) any agreement relating to any existing employee incentive arrangement; and

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

(c) If there is any doubt as to whether any proposed agreement, arrangement or commitment is subject to this Rule, the Panel should be consulted at the earliest opportunity.

**NOTES ON RULE 21.2****1. Competing offerors**

*Where an offeror has announced a firm intention to make an offer which was not recommended by the board of the offeree company at the time of that announcement and remains not recommended, the Panel will normally consent to the offeree company entering into an inducement fee arrangement with a competing offeror at the time of the announcement of its firm intention to make a competing offer, provided that:*

*(a) the aggregate value of the inducement fee or fees that may be payable by the offeree company is de minimis, ie normally no more than 1% of the value of the offeree company calculated by reference to the price of the competing offer (or, if there are two or more competing offerors, the first competing offer) at the time of the announcement made under Rule 2.7; and*

*(b) any inducement fee is capable of becoming payable only if an offer becomes or is declared wholly unconditional.*

**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 by means of a formal sale process, the Panel will normally grant a dispensation from the prohibition in Rule 21.2, such that the offeree company would be permitted, subject to the same provisos as set out in Note 1(a) and (b) above, to enter into an inducement fee arrangement with one offeror (who had participated in that process) at the time of the announcement of its firm intention to make an offer. In exceptional circumstances, the Panel*

**RULE 21 CONTINUED****NOTES ON RULE 21.2 continued**

*may also be prepared to consent to the offeree company entering into other offer-related arrangements with that offeror. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.*

**3. “Whitewash” transactions**

*Rule 21.2 also applies in the context of a “whitewash” transaction. The Panel should be consulted at an early stage where a “whitewash” transaction is proposed.*

**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 26.2.*

**RULE 22. RESPONSIBILITIES OF THE OFFEREE COMPANY  
AND AN OFFEROR REGARDING REGISTRATION PROCEDURES  
AND PERSONS WITH INTERESTS IN SECURITIES  
REPRESENTING 1% OR MORE**

(a) The board of the offeree company should ensure that its registrar complies fully with the procedures set out in Appendix 4. The board should also ensure prompt registration of transfers during an offer.

(b) The board of the offeree company should assist the Panel in identifying persons who are interested in 1% or more of any class of relevant securities of the offeree company and, promptly after the commencement of an offer period, should provide the Panel with details of all persons who are reasonably considered to be so interested. Such persons should also be sent an explanation of their disclosure obligations under Rule 8 at the same time as their details are provided to the Panel.

(c) Except in cases where it has been announced that any offer is, or is likely to be, in cash, the board of the offeror should assist the Panel in identifying persons who are interested in 1% or more of any class of relevant securities of the offeror and, promptly after the announcement that first identifies the offeror as such, should provide the Panel with details of all persons who are reasonably considered to be so interested. Such persons should be sent an explanation of their disclosure obligations under Rule 8 at the same time as their details are provided to the Panel.

**NOTES ON RULE 22**

**1. Qualifying periods**

*Provisions in Articles of Association which lay down a qualifying period after registration during which the registered holder cannot exercise his votes are highly undesirable.*

**2. Rule 2.12**

*Where, following the commencement of an offer period, the offeree company has sent a person a copy of an announcement or a circular in accordance with the provisions of Rule 2.12, there is no requirement to send that person a separate explanation of their disclosure obligations under Rule 8 in accordance with Rule 22(a) or (b).*

## **SECTION J. DOCUMENTS FROM THE OFFEROR AND THE OFFEREE BOARD**

### **RULE 23. GENERAL OBLIGATIONS AS TO INFORMATION**

#### **23.1 SUFFICIENT INFORMATION**

Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer. Such information must be available to shareholders early enough to enable them to make a decision in good time. No relevant information should be withheld from them. The obligation of the offeror in these respects towards the shareholders of the offeree company is no less than an offeror's obligation towards its own shareholders.

#### **NOTE ON RULE 23.1**

##### ***Offers conditional on shareholder action***

*When an offer has been announced which is conditional on action by offeree company shareholders (eg the rejection of a proposed acquisition or disposal), the first major circular published by the potential offeror must normally include the information which would be required by Rule 24 to be included in that circular if it were an offer document.*

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

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

- (a) shareholders in the offeree company;
- (b) persons with information rights; or
- (c) employee representatives (or employees) of the offeror or the offeree company,

pursuant to Rule 2.12, 20.1, 23.1, 24.1, 24.15, 25.1, 26.1, 30.2, 32.1 or 32.6(a), it must be sent, published or made available (as the case may be) to all such persons, including those who are located outside the EEA, unless there is sufficient objective justification for not doing so.

**RULE 23 CONTINUED****NOTE ON RULE 23.2****Shareholders, persons with information rights and employee representatives (or employees) outside the EEA**

*Where local laws or regulations of a particular non-EEA jurisdiction may result in a significant risk of civil, regulatory or, particularly, criminal exposure for the offeror or the offeree company if the information or documentation is sent, published or made available to shareholders in that jurisdiction without any amendment, and unless they can avoid such exposure by making minor amendments to the information being provided or documents being sent, published or made available either:*

*(a) the offeror or the offeree company need not provide such information or send, publish or make such information or documents available to registered shareholders of the offeree company or persons with information rights who are located in that jurisdiction if less than 3% of the shares of the offeree company are held by registered shareholders located there at the date on which the information is to be provided or the information or documents are to be sent, published or made available (and there is no need to consult the Panel in these circumstances); or*

*(b) in all other cases, the Panel may grant a dispensation where it would be proportionate in the circumstances to do so having regard to the cost involved, any resulting delay to the transaction timetable, the number of registered shareholders in the relevant jurisdiction, the number of shares involved and any other factors invoked by the offeror or the offeree company.*

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

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

**23.3 CONSENT TO INCLUSION OF ADVICE, OPINIONS AND REPORTS**

**If any document or announcement published in connection with an offer includes:**

**(a) the substance of the advice given to the board of the offeree company or to an offeror by the independent financial adviser appointed under Rule 3.1 or Rule 3.2;**

**(b) reports on a profit forecast or a quantified financial benefits statement given by reporting accountants and any financial adviser in accordance with Rule 28; or**

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**(c) an opinion on value given by an independent valuer in accordance with Rule 29,**

**the document or announcement must include a statement that each of the financial adviser(s), the reporting accountants and/or the independent valuer (as appropriate) has given and not withdrawn its consent to the inclusion of its advice, report or opinion (as the case may be) in the relevant document in the form and context in which it is included.**

**RULE 24. OFFEROR DOCUMENTS****24.1 THE OFFER DOCUMENT**

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

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

- (i) publish the offer document on a website in accordance with Rule 26.1; and
- (ii) announce via a RIS that the offer document has been so published.

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

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

- (i) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment;
- (ii) its strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's places of business;
- (iii) its intentions with regard to employer contributions into the offeree company's pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members;
- (iv) its intentions with regard to any redeployment of the fixed assets of the offeree company; and
- (v) its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree company.

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

**RULE 24 CONTINUED**

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

(c) Where the offeror is a company, and insofar as it is affected by the offer, the offeror must also state its intentions with regard to its future business and comply with (a)(i) and (ii) with regard to itself.

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

Except with the consent of the Panel:

(a) where the offeror is a company incorporated under the Companies Act 2006 (or its predecessors) and its shares are admitted to trading on a UK regulated market or on AIM or the ISDX Growth Market, the offer document must contain:

- (i) the names of its directors;
- (ii) the nature of its business and its financial and trading prospects;
- (iii) details of the website address where its audited consolidated accounts for the last two financial years have been published and a statement that the accounts have been incorporated into the offer document by reference to that website in accordance with Rule 24.15;
- (iv) details of the website address where any preliminary statement of annual results, half-yearly financial report or interim financial information published since the date of its last published audited accounts have been published and a statement that any such statement, report or information has been incorporated into the offer document by reference to that website in accordance with Rule 24.15;
- (v) in the case of a securities exchange offer, a description of any known significant change in its financial or trading position which has occurred since the end of the last financial period for which audited accounts, a preliminary statement of annual results, a half-yearly financial report or interim financial information has been published, or provide an appropriate negative statement;
- (vi) a statement of the effect of full acceptance of the offer upon its earnings and assets and liabilities; and
- (vii) a summary of the principal contents of each material contract (not being a contract entered into in the ordinary course of business)

**RULE 24 CONTINUED**

entered into by the offeror or any of its subsidiaries during the period beginning two years before the commencement of the offer period, including particulars of dates, parties, terms and conditions and any consideration passing to or from the offeror or any of its subsidiaries;

**(b)** if the offeror is other than a company referred to in (a) above, the offer document must contain:

**(i)** in respect of the offeror, the information described in (a) above (so far as appropriate) and such further information as the Panel may require in the particular circumstances of the case (see Note 2);

**(ii)** in respect of any person who has made (or proposes to make or increase) an investment in the offeror for the purposes of the offer such that he has or will have a potential direct or indirect interest in any part of the capital of the offeree company which the Panel regards as equity capital, details of his identity and of his interest in the offeror and such further information as the Panel may require in the particular circumstances of the case (see Note 2); and

**(iii)** in respect of any person not included in (ii) above whose pre-existing interest in the offeror is such that he has a potential direct or indirect interest of 5% or more in any part of the capital of the offeree company which the Panel regards as equity capital, details of his identity and of his interest in the offeror and such further information as the Panel may require in the particular circumstances of the case (see Note 2);

**(c)** the offer document must contain summary details of any current ratings and outlooks publicly accorded to the offeror and the offeree company by ratings agencies prior to the commencement of the offer period, any changes made to previous ratings or outlooks during the offer period, and a summary of the reasons given, if any, for any such changes;

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

**(i)** a heading stating “If you are in doubt about this offer you should consult an independent financial adviser authorised under the FSMA”;

**(ii)** the date when the document is published, the name and address of the offeror (including, where the offeror is a company, the type of company and the address of its registered office);

**(iii)** the identity of any person acting in concert with the offeror and, to the extent that it is known, the offeree company, including,

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in the case of a company, its type, registered office and relationship with the offeror and, where possible, with the offeree company. (See Note 3);

(iv) details of each class of security for which the offer is made, including whether those securities will be transferred “cum” or “ex” any dividend and the maximum and minimum percentages of those securities which the offeror undertakes to acquire;

(v) the terms of the offer, including the consideration offered for each class of security, the total consideration offered and particulars of the way in which the consideration is to be paid in accordance with Rule 31.8 or, in the case of a scheme of arrangement, Section 10 of Appendix 7;

(vi) all conditions to which the offer is subject;

(vii) particulars of all documents required, and procedures to be followed, for acceptance of the offer or, in the case of a scheme of arrangement, for voting;

(viii) the middle market quotations for the securities to be acquired, and (in the case of a securities exchange offer) securities offered, for the first business day in each of the six months immediately before the date of the offer document, for the last business day before the commencement of the offer period and for the latest available date before the publication of the offer document, together with the source (or, if any of the securities are not admitted to trading, any information available as to the number and price of transactions which have taken place during the preceding six months, together with the source, or an appropriate negative statement);

(ix) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a condition to its offer and the consequences of its doing so, including details of any break fees payable as a result;

(x) details of any irrevocable commitment or letter of intent which the offeror or any person acting in concert with it has procured in relation to relevant securities of the offeree company (or, if appropriate, the offeror) (see Note 3 on Rule 2.11);

(xi) in the case of a securities exchange offer, full particulars of the securities being offered, including the rights attaching to them, the first dividend or interest payment in which the securities will participate and how the securities will rank for dividends or interest, capital and redemption; a statement indicating the effect of

**RULE 24 CONTINUED**

acceptance on the capital and income position of the offeree company's shareholders; and details of any applications for admission to listing or admission to trading that have been or will be made in any jurisdiction in respect of the securities;

(xii) a summary of the provisions of Rule 8 (see the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk));

(xiii) the national law which will govern contracts concluded between the offeror and holders of the offeree company's securities as a result of the offer and the competent courts;

(xiv) the compensation (if any) offered for the removal of rights pursuant to Article 11 of the Directive together with particulars of the way in which the compensation is to be paid and the method employed in determining it;

(xv) a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2;

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

(xvii) any profit forecast or quantified financial benefits statement, and any related reports or confirmations, required by Rule 28;

(e) the offer document must contain information on the offeree company on the same basis as set out in (a)(i) to (v) above;

(f) the offer document must contain a description of how the offer is to be financed and the source(s) of the finance. Details must be provided of the debt facilities or other instruments entered into in order to finance the offer and to refinance the existing debt or working capital facilities of the offeree company and, in particular:

(i) the amount of each facility or instrument;

(ii) the repayment terms;

(iii) interest rates, including any "step up" or other variation provided for;

(iv) any security provided;

(v) a summary of the key covenants;

(vi) the names of the principal financing banks; and

(vii) if applicable, details of the time by which the offeror will be required to refinance the acquisition facilities and of the consequences of its not doing so by that time; and

**RULE 24 CONTINUED**

(g) if any document published by the offeror contains a comparison of the value of the offer with previous prices of the offeree company's shares, a comparison between the current value of the offer and the price of the offeree company's shares on the last business day prior to the commencement of the offer period must be prominently included, no matter what other comparisons are made.

**NOTES ON RULE 24.3****1. Where the offeror is a subsidiary company**

*The Panel will normally look through subsidiaries whose securities are not admitted to trading in interpreting this Rule unless, with the agreement of the Panel, the subsidiary in question is regarded as being of sufficient substance in relation to the group and the offer. Accordingly if the offeror is part of a group, information will normally be required on the ultimate holding company in the form of group accounts.*

**2. Further information requirements**

(a) *For the purposes of paragraphs (ii) and (iii) of Rule 24.3(b), the expression "person" will normally include the ultimate owner(s), and persons having control (as defined), of the offeror if not already included under paragraphs (ii) or (iii). Whilst the precise nature of the further information which may be required to be disclosed under paragraphs (i), (ii) or (iii) of Rule 24.3(b) in any particular case will depend on the circumstances of that case, the Panel would normally expect it to include a general description of the business interests of the offeror and/or other person(s) concerned and details of those assets which the Panel considers may be relevant to the business of the offeree company.*

(b) *The Panel must be consulted in advance in any case to which Rule 24.3(b) applies, or may apply regarding the application of its provisions to that particular case. Where information is incorporated into the offer document by reference to another source, the Panel will normally require that information to be available in the English language.*

**3. Persons acting in concert**

*For the purposes of Rule 24.3(d)(iii), the identity of a person acting in concert with the offeror or the offeree company must be disclosed if the offeree company shareholders need details of that person in order to reach a properly informed decision on the offer. Disclosure will normally include: a person who is interested in shares in the offeree company and (in the case of a securities exchange offer only) the offeror; any person with whom the offeror or the offeree company and any person acting in concert with either of*

**RULE 24 CONTINUED****NOTES ON RULE 24.3 continued**

*them has any arrangement of the kind referred to in Note 11 on the definition of acting in concert; any financial adviser which is advising the offeror or the offeree company in relation to the offer; and any corporate broker to either of them. In cases of doubt, the Panel should be consulted.*

**4. Offers made under Rule 9**

*When an offer is made under Rule 9, the information required under Rule 24.3(d)(v) must include the method employed under Rule 9.5 in calculating the consideration offered.*

**24.4 INTERESTS AND DEALINGS****(a) The offer document must state:**

**(i) details of any relevant securities of the offeree company in which the offeror has an interest or in respect of which he has a right to subscribe, 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 or any delivery obligation or right to require another person to purchase or take delivery, must also be stated;**

**(ii) the same details as in (i) above in relation to each of:**

**(a) the directors of the offeror;**

**(b) any other person acting in concert with the offeror; and**

**(c) any person with whom the offeror or any person acting in concert with the offeror has any arrangement of the kind referred to in Note 11 on the definition of acting in concert;**

**(iii) in the case of a securities exchange offer, the same details as in (i) above in respect of any relevant securities of the offeror in relation to each of the persons listed in (ii) above; and**

**(iv) details of any relevant securities of the offeree company and (in the case of a securities exchange offer only) the offeror which the offeror or any person acting in concert with it has borrowed or lent (including for these purposes any financial collateral arrangements of the kind referred to in Note 4 on Rule 4.6), save for any borrowed shares which have been either on-lent or sold.**

**RULE 24 CONTINUED**

(b) If, in the case of any of the persons referred to in Rule 24.4(a), there are no interests or short positions to be disclosed, this fact should be stated. This will not apply to category (a)(ii)(c) if there are no such arrangements.

(c) If any person referred to in Rule 24.4(a) has dealt in any relevant securities of the offeree company (or, in the case of a securities exchange offer only, of the offeror) during the period beginning 12 months prior to the offer period and ending with the latest practicable date prior to the publication of the offer document, the details, including dates, must be stated (see Note 5 on Rule 8). If no such dealings have taken place, this fact should be stated.

**NOTES ON RULE 24.4****1. Directors**

*In the case of directors, the disclosure should include details of all interests, short positions and borrowings of any other person whose interests in shares the director is taken to be interested in pursuant to Part 22 of the Companies Act 2006 and related regulations.*

**2. Aggregation**

*There may be cases where no useful purpose would be served by listing a large number of transactions. In such cases the Panel will accept in documents some measure of aggregation of each type of dealing by a person provided that no significant dealings are thereby concealed. The following approach is normally acceptable:*

(a) *for dealings during the offer period, all acquisitions and all disposals can be aggregated;*

(b) *for dealings in the three months prior to that period, all acquisitions and all disposals in that period can be aggregated on a monthly basis; and*

(c) *for dealings in the nine months prior to that period, acquisitions and disposals can be aggregated on a quarterly basis.*

*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.*

**RULE 24 CONTINUED****NOTES ON RULE 24.4 continued****3. Discretionary fund managers and principal traders**

*Interests in relevant securities and short positions of non-exempt discretionary fund managers and principal traders which are connected with the offeror and their dealings since the date 12 months prior to the offer period will need to be disclosed under Rules 24.4(a)(ii)(b) and 24.4(c) respectively.*

**4. Competing offerors**

*Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 24.4(a)(iii) and (iv), 24.4(b) and 24.4(c) must be included in relation to the relevant securities of each securities exchange offeror or potential offeror.*

**24.5 DIRECTORS' EMOLUMENTS**

**The offer document must state (in the case of a securities exchange offer only) whether and in what manner the emoluments of the offeror directors will be affected by the acquisition of the offeree company or by any other associated transaction. If there will be no effect, this must be stated.**

**NOTE ON RULE 24.5****Commissions etc.**

*Information given under this Rule should include any alterations to fixed amounts receivable or, as far as practicable, the effect of any factor governing commissions or other variable amounts receivable. Grouping or aggregating the effect of the transaction on the emoluments of several or all of the directors will normally be acceptable.*

**24.6 SPECIAL ARRANGEMENTS**

**Unless otherwise agreed with the Panel, the offer document must contain a statement as to whether or not any agreement, arrangement or understanding (including any compensation arrangement) exists between the offeror or any person acting in concert with it and any of the directors, recent directors, shareholders or recent shareholders of the offeree company, or any person interested or recently interested in shares of the offeree company, having any connection with or dependence upon the offer, and full particulars of any such agreement, arrangement or understanding.**

**See also Rule 16.2.**

**RULE 24 CONTINUED****24.7 INCORPORATION OF OBLIGATIONS AND RIGHTS\***

The offer document must state the time allowed for acceptance of the offer and any alternative offer and must incorporate language which appropriately reflects Notes 4–8 on Rule 10 and those parts of Rules 13.5(a), 13.6 (if applicable), 17 and 31–34 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of offeree companies.

**NOTES ON RULE 24.7****1. Incorporation by reference**

*A suitable cross reference to Notes 4–6 and Note 8 on Rule 10 is regarded as being sufficient appropriately to reflect those Notes but cross references to other provisions of the Code are not permitted.*

**2. Rule 31.6(d)**

*Rule 24.7 does not apply to the requirement, imposed by Rule 31.6(d), that an announcement as to whether the offer is unconditional as to acceptances or has lapsed should be made by 5.00 pm on the final closing date. Accordingly this requirement should not be reflected in the terms of the offer.*

**24.8 CASH CONFIRMATION**

When the offer is for cash or includes an element of cash, the offer document must include confirmation by an appropriate third party (eg the offeror’s bank or financial adviser) that resources are available to the offeror sufficient to satisfy full acceptance of the offer. (The party confirming that resources are available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash was available.)

**24.9 ULTIMATE OWNER OF SECURITIES ACQUIRED**

Unless otherwise agreed with the Panel, the offer document must contain a statement as to whether or not any securities acquired in pursuance of the offer will be transferred to any other persons, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all interests in the securities of the offeree company held by such persons, or a statement that no such interests are held.

*\*This Rule is disapplied in a scheme.*

**RULE 24 CONTINUED****24.10 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS\***

Where securities are offered as consideration and it is intended that they should be admitted to listing on the Official List and/or to trading on a recognised investment exchange, the relevant admission to listing and/or trading condition should, except with the consent of the Panel, be in terms which ensure that it is capable of being satisfied only when the decision to admit the securities to listing or trading has been announced by the UKLA and/or the relevant recognised investment exchange, as applicable. Where securities are offered as consideration and it is intended that they should be admitted to listing or to trading on any other investment exchange or market, the Panel should be consulted.

**24.11 ESTIMATED VALUE OF UNQUOTED PAPER CONSIDERATION**

When the offer involves the issue of securities of a class which is not admitted to trading, the offer document and any subsequent circular from the offeror must contain an estimate of the value of such securities by an appropriate adviser.

**24.12 NO SET-OFF OF CONSIDERATION**

The offer document must contain a statement to the effect that, except with the consent of the Panel, settlement of the consideration to which any shareholder is entitled under the offer will be implemented in full in accordance with the terms of the offer without regard to any lien, right of set-off, counterclaim or other analogous right to which the offeror may otherwise be, or claim to be, entitled against such shareholder.

The Panel would only grant consent in exceptional circumstances and where all shareholders were to be treated similarly.

**24.13 ARRANGEMENTS IN RELATION TO DEALINGS**

The offer document must disclose any arrangements of the kind referred to in Note 11 on the definition of acting in concert which exist between the offeror, or any person acting in concert with the offeror, and any other person; if there are no such arrangements, this should be stated.

*\*This Rule is disappplied in a scheme. See Section 15 of Appendix 7.*

**RULE 24 CONTINUED****24.14 CASH UNDERWRITTEN ALTERNATIVES WHICH MAY BE SHUT OFF\***

The procedure for acceptance of a cash underwritten alternative which is capable of being shut off must be prominently stated in relevant documents and acceptance forms. In particular, it must be made clear (in the offer document, the acceptance form and any subsequent documents) whether shareholders must lodge their certificates by the closing date of the cash underwritten alternative, in addition to their completed acceptance forms, in order to receive cash.

**24.15 INCORPORATION OF INFORMATION BY REFERENCE**

(a) In addition to the requirements under Rules 24.3(a)(iii) and (iv) (and, insofar as they refer to Rules 24.3(a)(iii) and (iv), Rules 24.3(b) and (e)) for certain information to be incorporated into an offer document by reference to a website, information that is required to be included in a document under other Rules may be incorporated by reference to another source with the Panel's consent.

(b) Information that is incorporated into a document by reference to another source must be published on a website by no later than the date on which the document is published. The information published on a website must be published:

- (i) in a form that may be printed, read and retained by the person to whom the document must be sent; and
- (ii) in a "read-only" format so that it may not be amended or altered in any way.

(c) If a person is sent a document which incorporates information by reference to another source, that person may request a copy of the information so incorporated in hard copy form. If such a request is made, the party which published the document must ensure that a copy of the requested information is sent to the relevant person in hard copy form as soon as possible and in any event within two business days of the request being received by the relevant party.

(d) Any document which incorporates information by reference to another source (and any related website notification) must contain a statement that a shareholder, person with information rights or other person to whom it is sent may request a copy of any such information in hard copy form. Attention should be drawn to the fact that a hard copy of the information will not be sent to that person unless requested and details must be provided of how a hard copy may be obtained (including

*\*This Rule is disapplied in a scheme.*

**RULE 24 CONTINUED**

an address in the United Kingdom and a telephone number to which requests may be submitted).

**NOTE ON RULE 24.15****Source of information incorporated by reference**

*Where a document incorporates information by reference to other sources, a consolidated list of all such information and sources must be provided including, in each case, details of where the information may be located (for example, providing details of the address of the website on which the information is published and details of the relevant document, page and, where relevant, paragraph numbers). A general reference to where information may be found, for example, "in the company's annual report and accounts" or "on the company's website" will not be sufficient.*

**24.16 FEES AND EXPENSES**

**(a) The offer document must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeror in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to:**

- (i) financing arrangements;**
- (ii) financial and corporate broking advice;**
- (iii) legal advice;**
- (iv) accounting advice;**
- (v) public relations advice;**
- (vi) other professional services (including, for example, management consultants, actuaries and specialist valuers); and**
- (vii) other costs and expenses.**

**(b) Where any fee is variable between defined limits, a range must be given in respect of the aggregate fees and expenses and of the fees and expenses of each relevant category, setting out the expected maximum and minimum amounts payable. See Note 2.**

**(c) Where the fees and expenses payable within a particular category are likely to exceed the estimated maximum previously disclosed by 10% or more, the offeror must promptly disclose to the Panel revised estimates of the aggregate fees and expenses expected to be incurred in relation to the offer and of the fees and expenses expected to be incurred within that category. The Panel may require the public disclosure of such revised estimates where it considers this to be appropriate.**

**RULE 24 CONTINUED**

(d) Where the final fees and expenses actually paid within a particular category exceed the amount publicly disclosed as the estimated maximum payable by 10% or more, the offeror must promptly disclose to the Panel the final amount paid in respect of that category. The Panel may require the public disclosure of such final amount where it considers this to be appropriate.

**NOTES ON RULE 24.16****1. Financing fees and expenses**

*Full details should be given of any fees and expenses payable, or estimated to be payable in relation to:*

- (a) *entering into any financing commitment; and*
- (b) *drawing down any financing.*

*Any commitment fees should normally be disclosed by means of describing the principal amounts of the financing facilities and the annual percentage rate applicable for the period of time between commitment and drawdown. A cross-reference to the description of how the offer is to be financed, as required under Rule 24.3(f), will normally be sufficient.*

**2. Variable and uncapped fee arrangements**

*Where a fee is variable or is not subject to a maximum amount, this should be stated and an indication of the nature of the arrangement given (for example, whether the amount of the fee is discretionary, relates to the outcome or final value of the offer or will be calculated on a “time cost” or other basis).*

*Where a particular category of fees and expenses includes a variable or uncapped element, the figure or range given should reflect a reasonable estimate of the fees likely to be paid on the basis of the terms of the then current offer.*

*Where a fee arrangement provides for circumstances in which the fee will or may increase, for example where the offer is revised or a competitive situation arises, the higher amount will not be required to be disclosed unless and until such circumstances arise.*

**RULE 25. OFFEREE BOARD CIRCULARS****25.1 THE OFFEREE BOARD CIRCULAR**

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

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

- (i) publish the offeree board circular on a website in accordance with Rule 26.1; and
- (ii) announce via a RIS that the offeree board circular has been so published.

**NOTE ON RULE 25.1*****Where there is no separate offeree board circular***

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

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

(a) The offeree board circular must set out the opinion of the board on the offer (including any alternative offers) and the board's reasons for forming its opinion and must include its views on:

- (i) the effects of implementation of the offer on all the company's interests, including, specifically, employment; and
- (ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business, as set out in the offer document pursuant to Rule 24.2.

(b) In addition, the circular must include the substance of the advice given to the board of the offeree company by the independent adviser appointed under Rule 3.1.

**RULE 25 CONTINUED****NOTES ON RULE 25.2****1. Factors which may be taken into account**

*The provisions of the Code do not limit the factors that the board of the offeree company may take into account in giving its opinion on the offer in accordance with Rule 25.2(a). In particular, when giving its opinion, the board of the offeree company is not required by the Code to consider the offer price as the determining factor and is not precluded by the Code from taking into account any other factors which it considers relevant.*

**2. Where there is no clear opinion or there is a divergence of views**

*If the board of the offeree company does not reach a clear opinion on an offer, or if there is a divergence of views among its members, or between the board and the independent adviser appointed under Rule 3.1, this must be stated and an explanation given, 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.*

*The views of any directors who are in a minority should also be included in the circular.*

**3. When a board has effective control**

*A board whose shareholdings confer control over an offeree company must carefully examine the reasons behind its opinion on the offer and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.*

**4. Conflicts of interest**

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

**5. Management buy-outs**

*If the offer is a management buy-out or similar transaction, a director will normally be regarded as having a conflict of interest where it is intended that he should have any continuing role (whether in an executive or non-executive capacity) in either the offeror or offeree company in the event of the offer being successful.*

**RULE 25 CONTINUED****25.3 FINANCIAL AND OTHER INFORMATION**

The offeree board circular must contain a description of any known significant change in the financial or trading position of the offeree company which has occurred since the end of the last financial period for which audited accounts, a preliminary statement of annual results, a half-yearly financial report or interim financial information has been published, or provide an appropriate negative statement.

**NOTES ON RULE 25.3****1. Offeree board circular combined with offer document**

*Where the offeree board circular is combined with the offer document, it will be the responsibility of the offeree board to include the information required by Rule 25.3. Accordingly, the offeror will not be required to comply with Rule 24.3(e) insofar as it applies to Rule 24.3(a)(v).*

**2. Offeree board circular published after offer document**

*Where the offeror has included in the offer document information on the offeree company as required by Rule 24.3(e) insofar as it applies to Rule 24.3(a)(v), such information does not need to be repeated in the offeree board circular provided that the statement made in accordance with Rule 25.3 makes specific reference to the relevant information disclosed by the offeror in the offer document.*

**25.4 INTERESTS AND DEALINGS****(a) The offeree board circular must state:**

**(i) details of any relevant securities of the offeror in which the offeree company or any of the directors of the offeree company has an interest or in respect of which it or he 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 or any delivery obligation or right to require another person to purchase or take delivery, must also be stated;**

**(ii) the same details as in (i) above in respect of any relevant securities of the offeree company in relation to each of:**

**(a) the directors of the offeree company;**

**(b) any other person acting in concert with the offeree company; and**

**RULE 25 CONTINUED**

(c) any person with whom the offeree company or any person acting in concert with the offeree company has an arrangement of the kind referred to in Note 11 on the definition of acting in concert;

(iii) in the case of a securities exchange offer, the same details as in (i) above in respect of any relevant securities of the offeror in relation to each of the persons listed in (ii)(b) and (c) above;

(iv) details of any relevant securities of the offeree company and (in the case of a securities exchange offer only) the offeror which the offeree company or any person acting in concert with the offeree company has borrowed or lent (including for these purposes any financial collateral arrangements of the kind referred to in Note 4 on Rule 4.6), save for any borrowed shares which have been either on-lent or sold; and

(v) whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept the offer (and, if there are alternative offers, and if so required by the Panel, which alternative they intend to elect for) or to reject the offer.

(b) If, in the case of any of the persons referred to in Rule 25.4(a), there are no interests or short positions to be disclosed, this fact should be stated. This will not apply to category (a)(ii)(c) if there are no such arrangements.

(c) If any person referred to in Rule 25.4(a)(i) has dealt in any relevant securities of the offeree company or the offeror between the start of the offer period and the latest practicable date prior to the publication of the circular, the details, including dates, must be stated (see Note 5 on Rule 8). If any person referred to in Rule 25.4(a)(ii)(b) to (c) has dealt in relevant securities of the offeree company (or, in the case of a securities exchange offer only, the offeror) during the same period, similar details must be stated. In all cases, if no such dealings have taken place this fact should be stated.

**NOTES ON RULE 25.4**

*(See also Notes on Rule 24.4 which apply equally to this Rule.)*

**1. When directors resign**

*When, as part of the transaction leading to an offer being made, some or all of the directors of the offeree company resign, this Rule applies to them in the usual way.*

**RULE 25 CONTINUED****NOTES ON RULE 25.4 continued****2. Competing offerors**

*Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 25.4(a)(i), (iii) and (iv) must be included in relation to the relevant securities of each securities exchange offeror or potential offeror. Similarly, where more than one offeror has announced an offer in accordance with Rule 2.7, the details required by Rule 25.4(a)(v) must be included in respect of each offer.*

**25.5 DIRECTORS' SERVICE CONTRACTS**

**(a) The offeree board circular must contain particulars of all service contracts of any director or proposed director of the offeree company with the company or any of its subsidiaries. If there are none, this should be stated.**

**(b) If any such contracts have been entered into or amended within 6 months of the date of the document, particulars must be given in respect of the earlier contracts (if any) which have been replaced or amended as well as in respect of the current contracts. If there have been none, this should be stated.**

**NOTES ON RULE 25.5****1. Particulars to be disclosed**

*Particulars in respect of existing service contracts and, where appropriate under Rule 25.5(b), earlier contracts or an appropriate negative statement must be provided as follows:*

- (a) the name of the director under contract;*
- (b) the date of the contract, the unexpired term and details of any notice periods;*
- (c) full particulars of the director's remuneration including salary and other benefits;*
- (d) any commission or profit sharing arrangements;*
- (e) any provision for compensation payable upon early termination of the contract; and*
- (f) details of any other arrangements which are necessary to enable investors to estimate the possible liability of the company on early termination of the contract.*

**RULE 25 CONTINUED****NOTES ON RULE 25.5 continued**

*It is not acceptable to refer to the latest annual report, indicating that information regarding service contracts may be found there, or to state that the contracts are open for inspection at a specified place.*

**2. Recent increases in remuneration**

*The Panel will regard as the amendment of a service contract under this Rule any case where the remuneration of an offeree company director is increased within 6 months of the date of the document. Therefore, any such increase must be disclosed in the document and the current and previous levels of remuneration stated.*

**25.6 ARRANGEMENTS IN RELATION TO DEALINGS**

The offeree board circular must disclose any arrangements of the kind referred to in Note 11 on the definition of acting in concert which exist between the offeree company, or any person acting in concert with the offeree company, and any other person; if there are no such arrangements, this should be stated.

**25.7 OTHER INFORMATION**

The offeree board circular must contain:

- (a) a summary of the principal contents of each material contract (not being a contract entered into in the ordinary course of business) entered into by the offeree company or any of its subsidiaries during the period beginning two years before the commencement of the offer period, including particulars of dates, parties, terms and conditions and any consideration passing to or from the offeree company or any of its subsidiaries;
- (b) details of any irrevocable commitment or letter of intent which the offeree company or any person acting in concert with it has procured in relation to relevant securities of the offeree company (or, if appropriate, the offeror) (see Note 3 on Rule 2.11);
- (c) a list of the documents which the offeree company has published on a website in accordance with Rules 26.2 and 26.3 and the address of the website on which the documents are published; and
- (d) any profit forecast or quantified financial benefits statement and any related reports or confirmations required by Rule 28.

**RULE 25 CONTINUED****25.8 FEES AND EXPENSES**

The offeree board circular must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeree company in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to the matters specified in paragraphs (ii) to (vii) of Rule 24.16(a). The other provisions of Rule 24.16 and Note 2 on Rule 24.16 also apply as if references to the offeror were references to the offeree company.

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

Where the board of the offeree company receives in good time before publication of its circular on the offer:

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

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

**NOTES ON RULE 25.9****1. Offeree company's responsibility for costs**

*The offeree company must pay for:*

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

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

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

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

*See Rule 2.12(d).*

**RULE 26. 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.

**26.2 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):

(a) any irrevocable commitment or letter of intent procured by the offeror or offeree company (as appropriate) or any person acting in concert with it;

(b) any documents relating to the financing of the offer (Rule 24.3(f));

(c) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert;

(d) any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2; and

(e) any agreements or arrangements, or, if not reduced to writing, a memorandum of all the terms of such agreements or arrangements, which relate to the circumstances in which the offeror may or may not invoke or seek to invoke a pre-condition or a condition to its offer (Rule 2.7(c)(iv)).

**RULE 26 CONTINUED****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):

(a) memorandum and articles of association of the offeror or the offeree company or equivalent documents;

(b) any report, letter, valuation or other document any part of which is exhibited or referred to in any document published by or on behalf of the offeror or the offeree company (other than the service contracts of offeree company directors and any material contracts that are not entered into in connection with the offer);

(c) any written consents of an independent financial adviser to the inclusion of its advice in the relevant document in the form and context in which it is included (Rule 23.3(a));

(d) any material contract entered into by an offeror or the offeree company, or any of their respective subsidiaries, in connection with the offer that is:

(i) described in the offer document or offeree board circular (as appropriate) in compliance with Rule 24.3(a), Rule 24.3(b) or Rule 25.7(a); or

(ii) entered into after the publication of the offer document or offeree board circular (as appropriate);

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

(i) the reports of the reporting accountants and of the financial advisers (Rules 28.1(a) and (b)); and

(ii) the written consents of the reporting accountants and of the financial advisers to the inclusion of their reports in the relevant document in the form and context in which they are included (Rule 23.3(b)) and, if appropriate, the confirmations that their reports continue to apply (Rule 27.2(d));

(f) where an asset valuation has been published:

(i) the valuation certificate and associated report or schedule containing details of the aggregate valuation (Rule 29.5(c)); and

**RULE 26 CONTINUED**

(ii) the written consent of the independent valuer to the inclusion of its opinion on value in the relevant document in the form and context in which it is included (Rule 23.3(c)) and, if appropriate, the confirmation that its report continues to apply (Rule 27.2(d));

(g) where the Panel has given consent to aggregation of dealings, a full list of all dealings (Note 2 on Rule 24.4); and

(h) all derivative contracts which in whole or in part have been disclosed under Rules 24.4(a) and (c) and 25.4(a) and (c) or in accordance with Rules 8.1, 8.2 or 8.4. Documents in respect of the last mentioned must be published from the time the offer document or the offeree board circular is published or from the time of disclosure, whichever is the later.

**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.*

**RULE 26 CONTINUED****NOTES ON RULE 26 continued****5. Amendment etc. of documents published on a website and entering into new documents required to be published on a website**

*If a document is amended, varied, updated or replaced during the period in which it is required to be published on a website under Rule 26, the amended, varied or updated document, or the replacement document, must also be published on a website and an announcement made explaining that this has been done. Similarly, where a new document is entered into which is required to be published on a website under Rule 26, an announcement must be made explaining that the document has been entered into and that it has been so published.*

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

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

**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 27. MATERIAL CHANGES AND SUBSEQUENT DOCUMENTS**

### **27.1 MATERIAL CHANGES**

(a) Except with the consent of the Panel, following the publication of the initial offer document or offeree board circular (as appropriate) and until the end of the offer period, the offeror or the offeree company (as appropriate) must promptly announce:

(i) any changes in information disclosed in any document or announcement published by it in connection with the offer which are material in the context of that document or announcement; and

(ii) any material new information which would have been required to have been disclosed in any previous document or announcement published during the offer period, had it been known at the time.

(b) Where an announcement is required to be made under Rule 27.1(a), the Panel may, in addition, require a document setting out the relevant information to be:

(i) sent to shareholders in the offeree company and persons with information rights; and

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

### **27.2 SUBSEQUENT DOCUMENTS**

(a) If, following the publication of the initial offer document or offeree board circular (as appropriate) and before the end of the offer period, an offeror or the offeree company publishes any subsequent document in connection with the offer, that document must include:

(i) any changes in information disclosed in any previous document published by it in connection with the offer which are material in the context of that document (or a statement that there have been no such material changes); and

(ii) details of any material changes to the matters listed in Rule 27.2(b) (in the case of an offeror) or in Rule 27.2(c) (in the case of the offeree company) which have occurred since the publication of any previous document published by it in connection with the offer (or a statement that there have been no such material changes).

**RULE 27 CONTINUED**

**(b) In the case of an offeror, the matters referred to in Rule 27.2(a)(ii) are as follows:**

- (i) its intentions with regard to the matters referred to in Rule 24.2;**
- (ii) any known significant change in its or the offeree company's financial or trading position (to the extent required under Rule 24.3(a)(v));**
- (iii) material contracts (Rule 24.3(a)(vii));**
- (iv) ratings and outlooks (Rule 24.3(c));**
- (v) the terms of the offer (Rule 24.3(d)(v));**
- (vi) any agreements or arrangements which relate to the invocation of the conditions to its offer (Rule 24.3(d)(ix));**
- (vii) irrevocable commitments and letters of intent (Rule 24.3(d)(x));**
- (viii) any offer-related arrangements etc. permitted under, or excluded from, Rule 21.2 (Rule 24.3(d)(xv));**
- (ix) profit forecasts and quantified financial benefits statements (Rule 24.3(d)(xvii));**
- (x) financing arrangements (Rule 24.3(f));**
- (xi) interests and dealings in relevant securities (Rule 24.4);**
- (xii) the effect of the offer on the emoluments of the offeror's directors (Rule 24.5);**
- (xiii) any special arrangements, including management incentivisation arrangements (Rule 16.2 and Rule 24.6);**
- (xiv) the ultimate owner of any securities acquired (Rule 24.9);**
- (xv) any arrangements of the kind referred to in Note 11 on the definition of acting in concert (Rule 24.13); and**
- (xvi) fees and expenses (to the extent required under Rule 24.16).**

**(c) In the case of the offeree company, the matters referred to in Rule 27.2(a)(ii) are as follows:**

- (i) its opinion on the offer and the other matters referred to in Rule 25.2(a);**

**RULE 27 CONTINUED**

- (ii) the substance of the independent financial adviser's advice (Rule 25.2(b));
  - (iii) any known significant changes in its financial or trading position (Rule 25.3);
  - (iv) interests and dealings in relevant securities (Rule 25.4);
  - (v) the service contracts of the offeree company's directors (Rule 25.5);
  - (vi) any arrangements of the kind referred to in Note 11 on the definition of acting in concert (Rule 25.6);
  - (vii) material contracts (Rule 25.7(a));
  - (viii) irrevocable commitments and letters of intent (Rule 25.7(b));
  - (ix) profit forecasts and quantified financial benefits statements (Rule 25.7(d)); and
  - (x) fees and expenses (to the extent required under Rule 25.8).
- (d) If any document or announcement published by the offeror or the offeree company included a profit forecast, a quantified financial benefits statement or an asset valuation, any document subsequently published by that party in connection with the offer must, unless superseded by information included in the new document, include a statement by the directors of that party confirming:
- (i) that the profit forecast, quantified financial benefits statement or asset valuation (as appropriate) remains valid;
  - (ii) where reports were obtained on a profit forecast or quantified financial benefits statement, that the reporting accountants and financial adviser(s) have confirmed that their reports continue to apply; and
  - (iii) where an opinion on value was obtained on an asset valuation, that the independent valuer has confirmed that its opinion continues to apply.

## **SECTION K. PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

### **RULE 28**

*NB The requirements of Rule 28 do not apply to a profit forecast or a quantified financial benefits statement published by a cash offeror.*

#### **28.1 REQUIREMENTS FOR PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

(a) Except with the consent of the Panel, if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror publishes a profit forecast or a quantified financial benefits statement, the document or announcement in which the forecast or statement is first published must include:

(i) a report from its reporting accountants stating that, in their opinion, the forecast or statement has been properly compiled on the basis stated and (in the case of a profit forecast only) that the basis of accounting used is consistent with the company's accounting policies; and

(ii) a report from its financial adviser(s) stating that, in its (or their) opinion, the forecast or statement has been prepared with due care and consideration.

(b) Except with the consent of the Panel, if the offeree company or a securities exchange offeror published a profit forecast before the offer period commenced but after it received or made an approach with regard to a possible offer, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must repeat the profit forecast and include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

(c) Except with the consent of the Panel, and subject to Note 3 (management buy-outs and offers by controllers), if the offeree company or a securities exchange offeror published a profit forecast before it received or made an approach with regard to a possible offer, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must:

(i) repeat the profit forecast and include a statement by the directors that it remains valid and confirmations by the directors that the profit forecast has been properly compiled on the basis of the assumptions stated and that the basis of accounting used is

**RULE 28 CONTINUED**

consistent with the company's accounting policies (the "directors' confirmations"); or

(ii) include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case; or

(iii) include a new profit forecast for the relevant period and the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

(d) See also Rule 28.2(b).

**NOTES ON RULE 28.1****1. Targets etc.**

*A statement described as a "target", "budget" or similar will normally be treated as a profit forecast, even if it is stated that it is not an indication of the likely level of profits, unless it is clear that the statement is no more than aspirational.*

**2. Ordinary course profit forecasts**

*(a) Subject to Note 3, if the offeree company or a securities exchange offeror published an ordinary course profit forecast at any stage before the offer period commenced, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must satisfy the requirements of Rule 28.1(c)(i), (ii) or (iii) (as appropriate).*

*(b) Subject to Note 3, if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror publishes an ordinary course profit forecast, the document or announcement in which the ordinary course profit forecast is first published must normally include the reports from its reporting accountants and financial adviser(s) required by Rule 28.1(a)(i) and (ii). However, with the agreement of each of the other parties to the offer, the Panel will normally consent to the disapplication of the requirement for reports, in which case the document or announcement must include the directors' confirmations required by Rule 28.1(c)(i).*

*(c) The Panel must be consulted if the offeree company or a securities exchange offeror considers that a profit forecast should be treated as an ordinary course profit forecast.*

**RULE 28 CONTINUED****NOTES ON RULE 28.1 continued****3. Management buy-outs and offers by controllers**

Where the offer is a management buy-out or similar transaction or is being made by the existing controller or group of controllers:

(a) the Panel will not normally grant a dispensation from the requirements of Rule 28.1(a) or (b) (as appropriate) with regard to any profit forecast (including an ordinary course profit forecast) by the offeree company for a financial period ending 15 months or less from the date on which the profit forecast is, or was, first published; and

(b) where the profit forecast was published by the offeree company before it received an approach with regard to a possible offer, the offer document, or any earlier document or announcement published during the offer period in which the profit forecast is referred to, will normally be required to repeat the profit forecast and include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

**4. Where the application of Rule 28 would be disproportionate or otherwise inappropriate**

(a) The Panel may grant a dispensation from the requirements of Rule 28 if it considers that the application of the Rule to the profit forecast would be disproportionate or otherwise inappropriate, for example:

(i) where the profit forecast states only a maximum figure for the likely level of profits for a particular financial period; or

(ii) in the case of an offeror, where the consideration securities will not represent a material proportion of its enlarged share capital or, alternatively, a material proportion of the value of the offer.

(b) Factors which the Panel might take into account when considering whether to grant a dispensation under paragraph (a) above include:

(i) the reason for the publication of the profit forecast, including whether it was (or would be) an ordinary course profit forecast (see Note 2);

(ii) whether the terms of the profit forecast are general or specific;

(iii) whether the offer has been recommended by the board of the offeree company and (in the case of an offeror) whether a competing offer or possible offer has been announced; and

(iv) in the case of paragraph (a)(i) (i.e. a profit “ceiling”), whether the offer is a management buy-out or similar transaction or is being made by an existing controller or group of controllers of the offeree company.

**RULE 28 CONTINUED****NOTES ON RULE 28.1 continued****5. Profit forecast for part of a business**

*Except with the consent of the Panel, Rule 28 applies in the same way to a profit forecast which relates to any part of the business of the offeree company or a securities exchange offeror as to a profit forecast which relates to the group as a whole.*

**6. Investment analyst and other third party forecasts**

*Except as provided in Rules 28.7 and 28.8, if in any document or announcement the offeree company or a securities exchange offeror refers to or quotes from a profit forecast relating to it published by an investment analyst or other third party, including a consensus forecast, it will be treated as having endorsed and published that profit forecast. The requirements of Rule 28.1 will then apply.*

**28.2 PROFIT FORECASTS FOR FUTURE FINANCIAL PERIODS**

**(a)** The Panel will normally grant a dispensation from the requirement to include reports from reporting accountants and the financial adviser(s) in the case of a profit forecast for a financial period ending more than 15 months from the date on which it is, or was, first published. Where such a dispensation is granted, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to or first published, must include the directors' confirmations referred to in Rule 28.1(c)(i). Alternatively, in the case of a profit forecast which was published before the offer period commenced, the document or announcement may include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case.

**(b)** Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror either publishes for the first time or repeats a profit forecast for a future financial year, the document or announcement must include a corresponding profit forecast for the current financial year and for each intervening financial year. The requirements of Rule 28.1(a), (b) or (c)(i) (as appropriate) will apply to each such forecast for a financial year ending 15 months or less from the date on which it is, or was, first published and the requirements of Rule 28.2(a) will normally apply to each such forecast for a financial year ending more than 15 months from the date on which it is, or was, first published.

**RULE 28 CONTINUED****NOTE ON RULE 28.2*****Other financial periods***

*The requirements of Rule 28.2(b) will also apply where the offeree company or a securities exchange offeror publishes a profit forecast for a financial period other than a financial year.*

**28.3 COMPILATION OF PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

(a) Any profit forecast or quantified financial benefits statement must be properly compiled and must be prepared with due care and consideration. The profit forecast or quantified financial benefits statement, and the assumptions on which it is based, are the responsibility of the relevant party to the offer and its directors.

(b) A profit forecast (and the assumptions stated) or a quantified financial benefits statement (and the details included in accordance with Rule 28.6) must be:

(i) understandable: it must not be so complex or include such extensive disclosure that it cannot be readily understood;

(ii) reliable: it must be supported by a thorough analysis of the offeree company's and/or the offeror's business and must represent factual and not hypothetical strategies, plans and risk analysis; and

(iii) comparable (in the case of a profit forecast only): it should be capable of justification by comparison with outcomes in the form of historical financial information.

(c) A forecast of profit before tax should disclose separately any non-recurrent items and tax charges if they are expected to be abnormally high or low.

**28.4 ASSUMPTIONS AND BASES OF BELIEF**

(a) When a profit forecast is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement must include the principal assumptions on which the profit forecast is based.

(b) The assumptions included for a profit forecast or bases of belief included for a quantified financial benefits statement should provide

**RULE 28 CONTINUED**

useful information as to its reasonableness and reliability. They must:

- (i) be readily understandable;
- (ii) be specific and precise; and
- (iii) not relate to the general accuracy of the estimates underlying the profit forecast or the quantified financial benefits statement.

(c) There must be a clear distinction between assumptions or bases of belief about factors which the directors (or other members of the company's management) can influence and those which they cannot influence.

**28.5 PROFIT ESTIMATES**

Rule 28.1 does not apply to a profit estimate included in:

- (a) a preliminary statement of annual results which complies with the relevant provisions of the UKLA Rules;
- (b) a half-yearly financial report which complies with the relevant provisions of the UKLA Rules, the AIM Rules for Companies or the ISDX Growth Market Rules for Issuers; or
- (c) an interim management statement, or other interim financial information, which is published by virtue of a regulatory requirement and which has been prepared in accordance with the reporting framework set out in International Accounting Standard 34.

**NOTES ON RULE 28.5****1. Preliminary statements of annual results**

*Where an unaudited preliminary statement of annual results is published by an offeree company or a securities exchange offeror whose securities are admitted to trading on a recognised investment exchange but to which the relevant provisions of the UKLA Rules do not apply, the Panel may nonetheless treat the exemption from the requirements of Rule 28.1 as applying if it is satisfied that the statement complies with the substance of those provisions.*

**2. Other circumstances in which a dispensation may be granted**

*Where an offeree company or a securities exchange offeror publishes, or has published, a profit estimate in accordance with a regulatory requirement which does not qualify for an exemption under Rule 28.5, the Panel may, in appropriate circumstances, grant a dispensation from the requirements of Rule 28.1 (for example, where an overseas company prepares a half-yearly*

**RULE 28 CONTINUED****NOTES ON RULE 28.5 continued**

*financial report under a framework equivalent to that in IAS 34 and consistent with that which it adopts for its statement of annual results). The Panel should be consulted in such cases.*

**28.6 DISCLOSURE REQUIREMENTS FOR QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

When a quantified financial benefits statement is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement must include:

- (a) the bases of belief supporting the statement (identifying the principal assumptions and sources of information);
- (b) an analysis, explanation and quantification of the constituent elements sufficient to enable the context and relative importance of those elements to be understood;
- (c) a base figure where any comparison is made with historical financial performance or with existing cost bases and structures;
- (d) details of any disbenefits expected to arise;
- (e) in the case of a statement falling under paragraph (a) of the definition of a “quantified financial benefits statement”, a statement that the expected financial benefits will accrue as a direct result of the success of the offer and could not be achieved independently of the offer;
- (f) an indication of when the financial benefits are expected to be realised;
- (g) an indication of whether the expected financial benefits will be recurring, clearly identifying any non-recurring benefit(s); and
- (h) the recurring and non-recurring costs of realising the expected financial benefits.

**NOTES ON RULE 28.6****1. Cost saving measures announced before the offer period**

*(a) Cost saving measures published by the offeree company prior to the offer period are not subject to Rule 28, even if they are repeated by the offeree company during the offer period. However, if, during the offer period, the offeree company revises any cost saving measures published prior to the offer*

**RULE 28 CONTINUED****NOTES ON RULE 28.6 continued**

*period, the revised cost saving measures will be treated as a quantified financial benefits statement, such that Rule 28.1(a) will then apply.*

*(b) The Panel should be consulted if an offeree company proposes to publish a statement with regard to new cost saving measures after it has received an approach but prior to the commencement of an offer period. If the Panel considers that the new cost saving measures are being published as a result of the approach, it may determine that the statement should be treated as if it were a quantified financial benefits statement published during the offer period, save that compliance with the requirements of Rule 28.1(a) may be deferred until the publication of the offeree board circular.*

**2. Statements by the offeree company**

*The Panel will not normally permit an offeree company to publish a statement quantifying the financial benefits expected to accrue from an offer by a particular offeror unless the statement is published with the consent of that offeror, in which case the requirements of Rule 28.1 will apply. However, the offeree company will be permitted to publish its views on any quantified financial benefits statement published by an offeror.*

**28.7 PUBLICATION OF INVESTMENT ANALYSTS' FORECASTS ON WEBSITES**

**(a) Where, during the offer period, the offeree company or a securities exchange offeror publishes on its website profit forecasts relating to it that are derived from investment analysts' forecasts, the forecasts on the website must be based on all forecasts provided by investment analysts who have published such forecasts, excluding:**

**(i) any forecasts which pre-date the publication of the company's latest preliminary statement of annual results or half-yearly financial report (as appropriate); and**

**(ii) any forecasts by investment analysts whose employer is controlled by, controls or is under the same control as any party to the offer or a connected adviser to any party to the offer.**

**(b) In addition to the exclusions in paragraph (a), an investment analyst's forecast may exceptionally be excluded from the forecasts on the company's website if it is wholly anomalous or has been prepared on a wholly different basis from that of the other investment analysts.**

**(c) Except with the consent of the Panel, the following requirements must be complied with (failing which, all investment analysts' forecasts**

**RULE 28 CONTINUED**

must be removed from the website upon the commencement of the offer period):

- (i) for each line in respect of which forecasts are published on the website, the highest and lowest figures forecast by any investment analyst must be stated, together with the arithmetic mean of all investment analysts' forecasts (a "*consensus forecast*");
- (ii) the name of each organisation whose forecasts have been included in the calculation of the consensus forecast, and the dates of the forecasts, must be stated;
- (iii) if any analyst's forecast has been excluded from the calculation of the consensus forecast, the name of the organisation, the date of the forecast and the reason for its exclusion, must be stated;
- (iv) during the offer period, the relevant section of the website must be kept up-to-date by including any new forecasts promptly after their publication and promptly excluding any forecasts which pre-date the publication of the latest preliminary statement of annual results or half-yearly financial report; and
- (v) it must be prominently stated that the investment analysts' forecasts are not endorsed by the company and that they have not been reviewed or reported on in accordance with the requirements of Rule 28.1(a).

(d) Subject to Rule 28.8, any reference to or quotation from a consensus or other third party forecast, other than publishing investment analysts' forecasts on a website in accordance with the requirements of this Rule 28.7, will be subject to Note 6 on Rule 28.1.

**NOTE ON RULE 28.7****Source data**

*Where party B has published consensus forecasts on its website in accordance with Rule 28.7, and party A wishes to refer to those consensus forecasts in accordance with Rule 28.8, the source data used by party B to compile the consensus forecasts must, on request, promptly be made available to party A.*

**RULE 28 CONTINUED****28.8 REFERENCES TO CONSENSUS FORECASTS RELATING TO ANOTHER PARTY TO THE OFFER**

(a) Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), a party to the offer ("party A") wishes to refer to investment analysts' forecasts relating to any other party to the offer ("party B"), party A must refer to either:

(i) a consensus forecast (see Rule 28.7(c)) published on party B's website in accordance with the requirements of Rule 28.7; or

(ii) if no such consensus forecast has been published on party B's website, a consensus forecast compiled by party A in accordance with the requirements of Rule 28.7.

(b) Where party A has referred to a consensus forecast relating to party B, any subsequent reference to that consensus forecast by party B will not be subject to Rule 28.1(a), provided that party B does not endorse the consensus forecast.

(c) Any document or announcement which includes a reference by party A to a consensus forecast relating to party B must make clear whether or not the reference is being made with the agreement or approval of party B. Where the consensus forecast is referred to in any document or announcement which is published by party A with the agreement or approval of party B, or at a time when the offer is a recommended offer, the consensus forecast will be treated as having been endorsed and published by party B and Rule 28.1(a) will therefore apply.

## SECTION L. ASSET VALUATIONS

### RULE 29

*NB All references in the Rule to “The Standards” are to the Royal Institution of Chartered Surveyors Valuation Standards.*

#### **29.1 VALUATIONS TO BE REPORTED ON IF GIVEN IN CONNECTION WITH AN OFFER**

When a valuation of assets is given in connection with an offer, it should be supported by the opinion of a named independent valuer. (For the purposes of this Rule, “an independent valuer” means a valuer who meets the requirements of an “external valuer” as defined in The Standards and, in addition, has no connection with other parties to the offer.)

##### *(a) Type of asset*

This Rule applies not only to land, buildings, plant and equipment but also to other assets, eg contracts, stocks, intangible assets and individual parts of a business. Where such other assets are involved, the Panel should be consulted in advance.

##### *(b) The valuer*

In relation to land, buildings, plant and equipment, a valuer should be a corporate member of The Royal Institution of Chartered Surveyors or The Institute of Revenues Rating and Valuation or some other person approved by the Panel. In respect of other types of asset, the valuer should be an appropriately qualified person approved by the Panel. The valuer must be able to demonstrate that he meets any legal or regulatory requirements which apply in the circumstances in which the particular valuation is required and either:

- (i) that he has, in respect of the particular type of property or asset, sufficient current local, national and international (as appropriate) knowledge of the particular market and the skills and understanding necessary to undertake the valuation competently; or
- (ii) where he satisfies (i) above, except that he has insufficient current knowledge, that he will be or has been assisted by a person(s) who has/have such knowledge and the skills and understanding necessary to provide the assistance required by the valuer.

##### *(c) In connection with an offer*

In certain cases offer documents or defence circulars will include statements of assets reproducing directors’ estimates of asset values published with the company’s accounts in accordance with Schedule 7 Part 1 of the Large and Medium-sized Companies and Groups (Accounts

**RULE 29 CONTINUED**

and Reports) Regulations 2008. The Panel will not regard such estimates as “given in connection with an offer” unless asset values are a particularly significant factor in assessing the offer and the estimates are, accordingly, given considerably more prominence in the offer documents or circulars than merely being referred to in a note to a statement of assets in an appendix. In these circumstances, such estimates must be supported, subject to Rule 29.2(e), by an independent valuer in accordance with this Rule.

***(d) Another party’s assets***

A party to an offer will not normally be permitted to publish a valuation, appraisal or calculation of worth of the assets owned by another party unless it is supported by the unqualified opinion of a named independent valuer and that valuer has had access to sufficient information to carry out a property valuation, appraisal or calculation of worth either in accordance with The Standards or, in respect of assets other than land, buildings, plant and equipment, to appropriate standards approved by the Panel. Comments by one party about another party’s valuation, appraisal or calculation of worth of its own assets may be permitted in exceptional circumstances. In all cases, the Panel must be consulted in advance.

**29.2 BASIS OF VALUATION**

(a) The basis of valuation must be clearly stated. Only in exceptional circumstances should it be qualified and in that event the valuer must explain the meaning of the words used. Similarly, special assumptions (see PS 2.2 of The Standards) should not normally be made in a valuation but, if assumptions are permitted by the Panel, they should be fully explained. (See PS 6 of The Standards.)

(b) In relation to valuations of land, buildings, plant and equipment, attention is drawn to The Standards.

(c) The basis of valuation will normally be Market Value as defined in The Standards. If the company’s accounts are prepared under UK Generally Accepted Accounting Principles, with the consent of the Panel, the bases of valuation set out in UK PS 1.1 of The Standards may be used.

(d) In the case of land currently being developed or with immediate development potential, in addition to giving the Market Value in the state existing at the date of valuation, the valuation should include:

- (i) the value after the development has been completed;
- (ii) the value after the development has been completed and let;

**RULE 29 CONTINUED**

(iii) the estimated total cost, including carrying charges, of completing the development and the anticipated dates of completion and of letting or occupation; and

(iv) a statement whether planning consent has been obtained and, if so, the date thereof and the nature of any conditions attaching to the consent which affect the value.

(e) In some exceptional cases, it will not be possible for a valuer to complete a full valuation of every property. The Panel may be prepared to regard the requirements of this Rule as met if the valuer carries out a valuation of a representative sample of properties and reports those valuations, with the directors taking sole responsibility for an estimate, based on the sample, to cover the remaining properties. This procedure will be available only where the portfolio as a whole is within the knowledge of the valuer, who must also certify the representative nature of the sample. Where this is done, the document sent to shareholders and persons with information rights should distinguish between properties valued professionally and those where the directors have made estimates on the basis of the sample valuation and should also compare such estimates with book values.

**NOTE ON RULE 29.2*****Provision of adjusted net asset value information***

*If it is proposed to include adjusted net asset value information, the Panel must be consulted.*

**29.3 POTENTIAL TAX LIABILITY**

When a valuation is given in connection with an offer, there should normally be a statement regarding any potential tax liability which would arise if the assets were to be sold at the amount of the valuation, accompanied by an appropriate comment as to the likelihood of any such liability crystallizing.

**29.4 CURRENT VALUATION**

A valuation must state the effective date as at which the assets were valued and the professional qualifications and address of the valuer. If a valuation is not current, the valuer must state that a current valuation would not be materially different. If this statement cannot be made, the valuation must be updated.

**RULE 29 CONTINUED****29.5 OPINION AND CONSENT LETTERS***(a) Publication of opinion*

The opinion of value must be contained in the document containing the asset valuation.

*(b) Consent*

The document must also state that the valuer has given and not withdrawn his consent to the publication of his valuation report.

*(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, 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.

**29.6 WAIVER IN CERTAIN CIRCUMSTANCES**

In exceptional cases, certain companies, in particular property companies, which are the subject of an unexpected offer may find difficulty in obtaining, within the time available, the opinion of an independent valuer to support an asset valuation, as required by this Rule, before the board's circular has to be published. In such cases, the Panel may be prepared exceptionally to waive strict compliance with this requirement. The Panel will only do this where the interests of shareholders seem on balance to be best served by permitting informal valuations to appear coupled with such substantiation as is available. Advisers to offeree companies who wish to make use of this procedure should consult the Panel at the earliest opportunity.

**SECTION M. DISTRIBUTION OF DOCUMENTATION DURING  
AN OFFER****RULE 30****30.1 PUBLICATION OF DOCUMENTS, ANNOUNCEMENTS AND  
INFORMATION**

If a document, an announcement or any information is required to be sent to any person, it will be treated as having been sent if it is:

- (a) sent to the relevant person in hard copy form;
- (b) sent to the relevant person in electronic form; or
- (c) published on a website provided that the relevant person is sent a website notification no later than the date on which it is published on the website.

**NOTE ON RULE 30.1****Forms**

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

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

- (a) If a document, an announcement or any information is required to be sent to any person and it is:
  - (i) sent to a person in electronic form; or
  - (ii) published on a website and the person entitled to receive it is sent a website notification,

that person may request a copy in hard copy form from the party which publishes it. Any such request must be made in accordance with the procedure specified in the document, announcement or information for the making of such requests and must provide an address to which the hard copy document, announcement or other information may be sent.

- (b) A person entitled to receive a document, an announcement or any information may request that all future documents, announcements and information sent to that person in relation to an offer should be sent by the party which publishes it in hard copy form.

**RULE 30 CONTINUED**

(c) If an offeror receives a request for copies of future documents, announcements and information sent to a person in connection with the offer to be sent in hard copy form, it must notify the offeree company as soon as possible and provide details of the address to which hard copy documents, announcements and information should be sent. If the offeree company receives a request for copies of future documents, announcements and information sent to a person in connection with the offer to be sent in hard copy form (either from the person concerned or from an offeror), it must provide the other parties to the offer with details of such requests at the same time as it provides them with updates to the company's register.

(d) If a request is made under (a) above for a hard copy of a document, an announcement or any information, the party which published it must ensure that it is sent to the relevant person as soon as possible and in any event within two business days of the request being received by that party.

(e) Any document, announcement or information that is sent to a person in electronic form or by means of being published on a website, and any related website notification, must contain a statement that the person to whom it is sent may request a copy of the document, announcement or information (and any information incorporated into it by reference to another source) in hard copy form and may also request that all future documents, announcements and information sent to that person in relation to the offer should be in hard copy form. Attention should be drawn to the fact that a hard copy of the document, announcement or information will not be sent to that person unless so requested and details must be provided of how a hard copy may be obtained (including an address in the United Kingdom and a telephone number to which requests may be submitted).

(f) If a shareholder, person with information rights or other person is entitled to be sent a document, an announcement or any information and has elected in accordance with any applicable legal or regulatory provisions to receive communications from the offeree company in hard copy form (and such election has been made in respect of information generally and not only in respect of certain specific types of information), that election must be treated by each party to an offer as also applying to the form in which any document, announcement or information must be sent to that person in relation to the offer (see also Section 4 of Appendix 4). If a request is made under (b) above for copies of future documents, announcements and information to be sent in hard copy form, that request must be treated by each party to an offer as an

**RULE 30 CONTINUED**

election made in accordance with applicable legal or regulatory provisions to receive communications from the offeree company in hard copy form.

**30.3 DISTRIBUTION OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION TO THE PANEL AND OTHER PARTIES TO AN OFFER**

(a) Before an offer document is published, a copy of the document in hard copy form and electronic form must be sent to the Panel. At the time of publication, a copy must also be sent in hard copy form and electronic form to the advisers to all other parties to the offer.

(b) Copies of all other documents, announcements and information published in connection with an offer by, or on behalf of, an offeror or the offeree company, including advertisements and any material released to the media (including any notes to editors), must at the time of publication or release be sent in electronic form to:

- (i) the Panel; and
- (ii) the advisers to all other parties to the offer.

Documents must also be sent in hard copy form to the Panel and the advisers to all other parties to the offer at the time of publication. Such documents, announcements or information must not be released to the media under an embargo (see also Note 1 on Rule 26).

(c) If a party to an offer publishes a document, an announcement or any information outside normal business hours, that party must inform the advisers to all other parties to the offer of its publication immediately (if necessary by telephone). In such circumstances, special arrangements may need to be made to ensure that a copy of the document, announcement or information is sent directly to the relevant advisers and to the Panel. No party to an offer should be put at a disadvantage through a delay in the release of new information to it.

**NOTE ON RULE 30.3*****Information incorporated by reference***

*Where information is incorporated into a document by reference to another source of information, a copy of the information so incorporated should be sent to the Panel and the advisers to all other parties to an offer in electronic form at the same time as the document sent in accordance with this Rule.*

## **SECTION N. OFFER TIMETABLE AND REVISION**

### **RULE 31. TIMING OF THE OFFER\***

#### **31.1 FIRST CLOSING DATE**

An offer must initially be open for at least 21 days following the date on which the offer document is published.

#### **31.2 FURTHER CLOSING DATES TO BE SPECIFIED**

In any announcement of an extension of an offer, either the next closing date must be stated or, if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice. In the latter case, or if the offer will remain open for acceptances beyond the 70th day following the publication of the offer document, at least 14 days' notice must be given, before the offer is closed, to those shareholders who have not accepted by sending a notification to offeree company shareholders and persons with information rights.

#### **31.3 NO OBLIGATION TO EXTEND**

There is no obligation to extend an offer if the acceptance condition has not been satisfied by the first or any subsequent closing date.

#### **31.4 OFFER TO REMAIN OPEN FOR 14 DAYS AFTER UNCONDITIONAL AS TO ACCEPTANCES**

After an offer has become or is declared unconditional as to acceptances, the offer must remain open for acceptance for not less than 14 days after the date on which it would otherwise have expired (see Rules 33.1 and 33.2). When, however, an offer is unconditional as to acceptances from the outset, a 14 day extension is not required but the position should be set out clearly and prominently in the offer document.

#### **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

*\*This Rule is disapplied in a scheme. See Appendix 7.*

**RULE 31 CONTINUED**

(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.

**NOTES ON RULE 31.5**

*(See also Rule 31.6)*

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

(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 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 a no extension statement has not been specifically reserved, the offeror will be allowed to extend its offer only in wholly exceptional circumstances (except as required by Rule 31.4).*

**3. Competitive situations**

*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) *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 extension 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*

**RULE 31 CONTINUED****NOTES ON RULE 31.5 continued**

*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 extension 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 extension 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 extension 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.*

**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

**RULE 31 CONTINUED**

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*

**RULE 31 CONTINUED****NOTES ON RULE 31.6 continued**

*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.*

**31.7 TIME FOR FULFILMENT OF ALL OTHER CONDITIONS**

**Except with the consent of the Panel, all conditions must be fulfilled or the offer must lapse within 21 days of the first closing date or of the date the offer becomes or is declared unconditional as to acceptances, whichever is the later. The Panel’s consent will normally only be granted if the outstanding condition involves a material official authorisation or regulatory clearance relating to the offer and it had not been possible to obtain an extension under Rule 31.6.**

**NOTES ON RULE 31.7****1. The effect of lapsing**

*The Note on Rule 12.1 also applies to this Rule.*

**2. Extensions**

*Any extension to which the Panel consents must be announced by the offeror in accordance with Rule 2.9. The Panel should be consulted as to whether a*

**RULE 31 CONTINUED****NOTES ON RULE 31.7 continued**

*notification in respect of the extension should also be sent to offeree company shareholders and persons with information rights.*

**31.8 SETTLEMENT OF CONSIDERATION**

Except with the consent of the Panel, the consideration must be sent to accepting shareholders within 14 days of the later of: the first closing date of the offer, the date the offer becomes or is declared wholly unconditional or the date of receipt of an acceptance complete in all respects.

**NOTE ON RULE 31.8****Extensions**

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

**31.9 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39**

The board of the offeree company should not, except with the consent of the Panel (which should be consulted in good time), announce any material new information, including trading results, profit forecasts (including ordinary course profit forecasts), dividend forecasts, asset valuations, quantified financial benefits statements and proposals for dividend payments or for any material acquisition or disposal, after the 39th day following the publication of the initial offer document. Where a matter which might give rise to such an announcement being made after the 39th day is known to the offeree company, every effort should be made to bring forward the date of the announcement, but, where this is not practicable or where the matter arises after that date, the Panel will normally give its consent to a later announcement. 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.

(See also Note 5 on Rule 31.6.)

**31.10 RETURN OF DOCUMENTS OF TITLE**

If an offer lapses, all documents of title and other documents lodged with forms of acceptance must be returned as soon as practicable (and in any event within 14 days of the lapsing of the offer) and the receiving agent should immediately give instructions for the release of securities held in escrow.

## RULE 32. REVISION

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

(b) At the same time:

- (i) both the offeror and the offeree company must make the revised offer document readily available to their employee representatives (or, where there are no employee representatives, to the employees themselves);
- (ii) the offeror must make the revised offer document readily available to the trustees of the offeree company's pension scheme(s); and
- (iii) the offeree company must inform its employee representatives (or employees) and the trustees of its pension scheme(s) of the right of employee representatives and pension scheme trustees under Rule 32.6 to have a separate opinion on the revised offer appended to any offeree board circular published in relation to the revised offer. In addition, the offeree company must inform its employee representatives (or employees) of the offeree company's responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in their opinion.

(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**

##### **1. *Announcements which may increase the value of an offer***

*Where an offer involves an exchange of equity or potential equity, the announcement by an offeror of any material new information, including trading results, profit forecasts (including ordinary course profit forecasts), dividend forecasts, asset valuations, quantified financial benefits statements and proposals for dividend payments or for any material acquisition or disposal, may have the effect of increasing the value of the offer. An offeror*

*\*Rule 32.1(c) is disapplied in a scheme. See Section 7 of Appendix 7.*

**RULE 32 CONTINUED****NOTES ON RULE 32.1 continued**

will not, therefore, normally be permitted to make such announcements after it is precluded from revising its offer. If an announcement of a kind referred to in this Note might fall to be made during the offer period, the Panel must be consulted at the earliest opportunity and an offeror will not be permitted to make a no increase statement as defined in Rule 32.2 prior to the publication of the announcement.

**2. When revision is required**

An offeror will normally be required to revise its offer if it, or any person acting in concert with it, acquires an interest in shares at above the offer price (see Rule 6) or it becomes obliged to make an offer in accordance with Rule 11 or to make a cash offer, or to increase an existing cash offer, under Rule 9.

**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.

**4. Triggering Rule 9<sup>†</sup>**

When an offeror, which is making a voluntary offer either in cash or with a cash alternative, acquires an interest in shares which causes it to have to extend a mandatory offer under Rule 9 at no higher price than the existing cash offer, the change in the nature of the offer will not be viewed as a revision (and will thus not be precluded by an earlier no increase statement), even if the offeror is obliged to waive any outstanding condition, but such an acquisition can only be made if the offer can remain open for acceptance for a further 14 days following the date on which the amended offer document is published.

**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.

\*The first sentence of Note 3 on Rule 32.1 is disappplied in a scheme. See Section 7 of Appendix 7.

†This Note is disappplied in a scheme. See Section 2 of Appendix 7.

**RULE 32 CONTINUED****NOTES ON RULE 32.1 continued**

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).

**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.

**RULE 32 CONTINUED****NOTES ON RULE 32.2 continued**

(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<sup>†</sup>**

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.

\*Paragraph (b) of Note 3 is disappplied in a scheme.

<sup>†</sup>This Note is disappplied in a scheme.

**RULE 32 CONTINUED****NOTES ON RULE 32.2 continued****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.*

**32.3 ENTITLEMENT TO REVISED CONSIDERATION**

**If an offer is revised, all shareholders who accepted the original offer must be entitled to the revised consideration.**

**32.4 NEW CONDITIONS FOR INCREASED OR IMPROVED OFFERS OR FOLLOWING A SWITCH**

**Subject to the prior consent of the Panel, and only to the extent necessary to implement an increased or improved offer, or a switch to or from a scheme of arrangement, the offeror may introduce new conditions (eg obtaining shareholders' approval or the admission to listing or admission to trading of new securities).**

**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. 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. 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.*

**RULE 32 CONTINUED****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;
- (ii) announce via a RIS that the circular has been published; and
- (iii) make the circular readily and promptly available to its employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of its pension scheme(s).

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

- (i) an opinion from employee representatives on the effects of the revised offer on employment; or
- (ii) an opinion from the trustees of any of its pension scheme(s) on the effects of the revised offer on the pension scheme(s),

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

**NOTE ON RULE 32.6**

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

*See Note 1 on Rule 25.9.*

**RULE 33. ALTERNATIVE OFFERS\*****33.1 TIMING AND REVISION**

In general, the provisions of Rules 31 and 32 apply equally to alternative offers, including cash alternatives.

**NOTES ON RULE 33.1****1. Elections**

*For the purpose of this Rule, an arrangement under which shareholders elect, subject to the election of other shareholders, to vary the proportion in which they are to receive different forms of consideration is not regarded as an alternative offer and may be closed without notice on any closing date; this must be clearly stated in the offer document.*

**2. Shutting off**

*Normally, except as permitted by Rule 33.2, if an offer has become or is declared unconditional as to acceptances, all alternative offers must remain open in accordance with Rule 31.4.*

*In accordance with Rule 31.3, if on a closing date an offer is not unconditional as to acceptances, an alternative offer (except a cash alternative provided to satisfy the requirements of Rule 9) may be closed without prior notice. However, if, on the first closing date on which an offer is capable of being declared unconditional as to acceptances, the offer is not so declared and is extended, all alternative offers must, except as permitted by Rule 33.2, remain open for 14 days thereafter but may then be closed without prior notice.*

**33.2 SHUTTING OFF CASH UNDERWRITTEN ALTERNATIVES**

Where the value of a cash underwritten alternative provided by third parties is, at the time of announcement, more than half the maximum value of the offer, an offeror will not be obliged to keep that alternative open in accordance with Rules 31.4 or 33.1 if it has sent a notification to offeree company shareholders and persons with information rights that it reserves the right to close it on a stated date, being not less than 14 days after the date on which the notification is published, or to extend it on that stated date. Notice under this Rule may not be given between the time when a competing offer has been announced and the end of the resulting competitive situation. (See also Rule 24.14.)

*\*This Rule is disapplied in a scheme. See Appendix 7.*

**RULE 33 CONTINUED****NOTES ON RULE 33.2****1. Further notifications**

*Where a notification has been published pursuant to this Rule and the alternative is not closed on the stated date but extended, the offeror must send a further notification to shareholders and persons with information rights if it wishes to take advantage of this Rule.*

**2. Rule 9 offers**

*This Rule will not apply to a cash alternative provided to satisfy the requirements of Rule 9.*

**33.3 REINTRODUCTION OF ALTERNATIVE OFFERS**

**Where a firm statement has been made that an alternative offer will not be extended or reintroduced and that alternative has ceased to be open for acceptance, neither that alternative, nor any substantially similar alternative, may be reintroduced. Where, however, such a statement has not been made and an alternative offer has closed for acceptance, an offeror will not be precluded from reintroducing that alternative at a later date. Reintroduction would constitute a revision of the offer and would, therefore, be subject to the requirements of, and only be permitted as provided in, Rule 32.**

**RULE 34. RIGHT OF WITHDRAWAL\*****34.1 WHEN THE RIGHT OF WITHDRAWAL MAY BE EXERCISED**

An accepting shareholder must be entitled to withdraw his acceptance from the date which is 21 days after the first closing date of the initial offer, if the offer has not by such date become or been declared unconditional as to acceptances. This entitlement to withdraw must be exercisable until the earlier of:

- (a) the time that the offer becomes or is declared unconditional as to acceptances; and
- (b) the final time for lodgement of acceptances which can be taken into account in accordance with Rule 31.6.

**34.2 OFFEREE PROTECTION CONDITIONS**

An accepting shareholder must be entitled to withdraw his acceptance if so determined by the Panel in accordance with Rule 13.6.

**34.3 RETURN OF DOCUMENTS OF TITLE**

If a shareholder withdraws his acceptance, all documents of title and other documents lodged with the form of acceptance must be returned as soon as practicable following the receipt of the withdrawal (and in any event within 14 days) and the receiving agent should immediately give instructions for the release of securities held in escrow.

*\*This Rule is disapplied in a scheme.*

**SECTION O. RESTRICTIONS FOLLOWING OFFERS****RULE 35****35.1 DELAY OF 12 MONTHS**

Except with the consent of the Panel, where an offer has been announced or made but has not become or been declared wholly unconditional and has been withdrawn or has lapsed otherwise than pursuant to Rule 12.1, neither the offeror, nor any person who acted in concert with the offeror in the course of the original offer, nor any person who is subsequently acting in concert with any of them, may within 12 months from the date on which such offer is withdrawn or lapses either:

(a) announce an offer or possible offer for the offeree company (including a partial offer which could result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of the offeree company);

(b) acquire any interest in shares of the offeree company if the offeror or any such person would thereby become obliged under Rule 9 to make an offer;

(c) acquire any interest in, or procure an irrevocable commitment in respect of, shares of the offeree company if the shares in which such person, together with any persons acting in concert with him, would be interested and the shares in respect of which he, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the voting rights of the offeree company;

(d) make any statement which raises or confirms the possibility that an offer might be made for the offeree company; or

(e) take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the offeror and its immediate advisers.

**35.2 PARTIAL OFFERS**

The restrictions in Rule 35.1 will also apply following a partial offer:

(a) which could result in the offeror and persons acting in concert with it being interested in shares carrying not less than 30% but not holding shares carrying more than 50% of the voting rights of the offeree company whether or not the offer has become or been declared wholly unconditional. When such an offer has become or been declared wholly unconditional, the period of 12 months runs from that date; and

(b) for more than 50% of the voting rights of the offeree company which has not become or been declared wholly unconditional.

**RULE 35 CONTINUED**

The restrictions in Rule 35.1 will not normally apply following a partial offer which could only result in the offeror and persons acting in concert with it being interested in shares carrying less than 30% of the voting rights of the offeree company.

**NOTE ON RULES 35.1 and 35.2****When consent may be given**

- (a) *The Panel will normally only give its consent under this Rule if:*
- (i) *the new offer is recommended by the board of the offeree company. Such consent will not normally be given within three months of the lapsing of an earlier offer in circumstances where the offeror was prevented from revising or extending its previous offer as a result of a no increase statement or a no extension statement;*
  - (ii) *the new offer follows the announcement by a third party of a firm intention to make an offer for the offeree company;*
  - (iii) *the new offer follows the announcement by the offeree company of a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover which has not failed or lapsed or been withdrawn; or*
  - (iv) *the Panel determines that there has been a material change of circumstances.*
- (b) *The Panel may also give consent in circumstances in which it is likely to prove, or has proved, impossible to obtain material official authorisations or regulatory clearances relating to an offer within the Code timetable. The Panel should be consulted by an offeror or potential offeror as soon as it has reason to believe that this may become the position.*
- (c) *The restrictions in Rules 35.1(d) and (e) will not normally apply to the extent that the offer lapsed as a result of the offeror failing to obtain a material official authorisation or regulatory clearance relating to the offer within the usual Code timetable, but the offeror is continuing to seek clearance or a decision from the relevant official or regulatory authorities with a view subsequently to making a new offer with the consent of the Panel in accordance with Note (b) on Rule 35.1.*

*NB Rule 2.2(e) will continue to apply in these circumstances.*

**RULE 35 CONTINUED****35.3 DELAY OF 6 MONTHS BEFORE ACQUISITIONS ABOVE THE OFFER VALUE**

Except with the consent of the Panel, if a person, together with any person acting in concert with him, holds shares carrying more than 50% of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months of the closure of any previous offer made by him to the shareholders of that company which became or was declared wholly unconditional, make a second offer to any shareholder in that company, or acquire any interest in shares in that company, on more favourable terms than those made available under the previous offer (see also Rule 6.2(a)). For this purpose the value of a securities exchange offer shall be calculated as at the date the offer closed. In addition, special deals with favourable conditions attached may not be entered into during this 6 months period (see also Rule 16.1).

**35.4 RESTRICTIONS ON DEALINGS BY A COMPETING OFFEROR WHOSE OFFER HAS LAPSED**

Except with the consent of the Panel, where an offer has been one of two or more competing offers and has lapsed, neither that offeror, nor any person acting in concert with that offeror, may acquire any interest in shares in the offeree company on more favourable terms than those made available under its lapsed offer until each of the competing offers has either been declared unconditional in all respects or has itself lapsed. For these purposes, the value of the lapsed offer shall be calculated as at the day the offer lapsed.

**NOTE ON RULES 35.3 and 35.4*****Determination of price***

*The price paid for any acquisition of an interest in shares will be determined in the manner set out in Note 4 on Rule 6 (other than the final paragraph of that Note).*

*However, where:*

*(a) a call option was entered into during any period that was relevant for the purposes of Rule 6 (or Rule 9.5, where relevant) in relation to the previous or lapsed offer; and*

*(b) that call option is exercised:*

*(i) during the six month period referred to in Rule 35.3 (in the case of Rule 35.3); or*

*(ii) before any competing offer has either been declared unconditional in all respects or has itself lapsed (in the case of Rule 35.4),*

**RULE 35 CONTINUED****NOTE ON RULES 35.3 and 35.4 continued**

*then the person will be treated as having acquired an interest in shares at the time of such exercise and, for the purposes of Rule 35.3 or Rule 35.4 (as the case may be), the price paid will normally be treated as the amount paid on exercise of the option together with any amount paid by the option-holder on entering into the option.*

*Where a person acquired an interest in shares before the period referred to in paragraph (a) above as a result of any option, derivative or agreement to purchase and, during the relevant period referred to in paragraph (b) above, the person acquires any of the relevant shares, no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, if the terms of the instrument have been varied in any way, or if the shares are acquired other than on the terms of the original instrument, the Panel should be consulted.*

## SECTION P. PARTIAL OFFERS

### RULE 36

#### 36.1 PANEL'S CONSENT REQUIRED

The Panel's consent is required for any partial offer. In the case of an offer which could not result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of a company, consent will normally be granted.

#### 36.2 ACQUISITIONS BEFORE THE OFFER

In the case of an offer which could result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more but holding less than 100% of the voting rights of a company, such consent will not normally be granted if the offeror or persons acting in concert with it have acquired, selectively or in significant numbers, interests in shares in the offeree company during the 12 months preceding the application for consent or if interests in shares have been acquired at any time after the partial offer was reasonably in contemplation.

#### 36.3 ACQUISITIONS DURING AND AFTER THE OFFER

The offeror and persons acting in concert with it may not acquire any interest in shares in the offeree company during the offer period. In addition, in the case of a successful partial offer, neither the offeror, nor any person who acted in concert with the offeror in the course of the partial offer, nor any person who is subsequently acting in concert with any of them, may, except with the consent of the Panel, acquire any interest in such shares during a period of 12 months after the end of the offer period.

#### NOTES ON RULE 36.3

**1. Discretionary fund managers and principal traders**

*Deals by non-exempt discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 7.2.*

**2. Partial offer resulting in an interest of less than 30%**

*The consent of the Panel will normally be granted for acquisitions of interests in shares within 12 months of the end of the offer period when a partial offer has resulted in the offeror and persons acting in concert with it being interested in shares carrying less than 30% of the voting rights of a company.*

**RULE 36 CONTINUED****36.4 OFFER FOR BETWEEN 30% AND 50%**

When an offer is made which could result in the offeror and persons acting in concert with it being interested in shares carrying not less than 30% but not holding shares carrying more than 50% of the voting rights of a company, the precise number of shares offered for must be stated and the offer may not be declared unconditional as to acceptances unless acceptances are received for not less than that number.

**36.5 OFFER FOR 30% OR MORE REQUIRES 50% APPROVAL**

Any offer which could result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of a company must be conditional, not only on the specified number of acceptances being received, but also on approval of the offer, normally signified by means of a separate box on the form of acceptance, being given in respect of over 50% of the voting rights held by shareholders who are independent of the offeror and persons acting in concert with it. This requirement may on occasion be waived if over 50% of the voting rights of the offeree company are held by one shareholder.

**36.6 WARNING ABOUT CONTROL POSITION**

In the case of a partial offer which could result in the offeror, either alone or with persons acting in concert with it, holding shares carrying over 50% of the voting rights of the offeree company, the offer document must contain specific and prominent reference to this and to the fact that, if the offer succeeds, the offeror or, where appropriate, the offeror and persons acting in concert with it, will be free, subject to Rule 36.3 and, where relevant, to Note 4 on Rule 9.1, to acquire further interests in shares without incurring any obligation under Rule 9 to make a general offer.

**36.7 SCALING DOWN**

Partial offers must be made to all shareholders of the class and arrangements must be made for those shareholders who wish to do so to accept in full for the relevant percentage of their holdings. Shares tendered in excess of this percentage must be accepted by the offeror from each shareholder in the same proportion to the number tendered to the extent necessary to enable it to obtain the total number of shares for which it has offered.

**RULE 36 CONTINUED****36.8 COMPARABLE OFFER**

When an offer is made for a company with more than one class of equity share capital which could result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights, a comparable offer must be made for each class.

**NOTES ON RULE 36****1. Allotted but unissued shares**

*When shares of a company carrying voting rights have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Panel should be consulted. It is likely that such shares, and the acquisition of an interest in such shares, will be taken into account for the purpose of this Rule.*

**2. Dual consideration offers for 100%**

*If a certain consideration is offered for part of each shareholder's holding and a lower consideration for the balance, such an offer may be treated as a form of partial offer in spite of the fact that the offer is being made for all voting equity share capital not already held. Rule 36.5 may apply and the Panel's consent must be sought if any such offer is contemplated.*

**3. Use of tender offers**

*In certain circumstances, with the consent of the Panel, a tender offer may be used instead of a partial offer in which case the Rules set out in Appendix 5 will apply.*

**4. Schemes of arrangement**

*The Panel should be consulted where it is proposed to implement a partial offer by means of a scheme of arrangement.*

## SECTION Q. REDEMPTION OR PURCHASE BY A COMPANY OF ITS OWN SECURITIES

### RULE 37

#### 37.1 POSSIBLE REQUIREMENT TO MAKE A MANDATORY OFFER

When a company redeems or purchases its own voting shares, any resulting increase in the percentage of shares carrying voting rights in which a person or group of persons acting in concert is interested will be treated as an acquisition for the purpose of Rule 9. Subject to prior consultation, the Panel will normally waive any resulting obligation to make a general offer if there is a vote of independent shareholders and a procedure on the lines of that set out in Appendix 1 is followed.

#### NOTES ON RULE 37.1

##### 1. *Persons who will not be required to make a mandatory offer*

*A person who comes to exceed the limits in Rule 9.1 in consequence of a company's redemption or purchase of its own shares will not normally incur an obligation to make a mandatory offer unless that person is a director, or the relationship of the person with any one or more of the directors is such that the person is, or is presumed to be, acting in concert with any of the directors. A person who has appointed a representative to the board of the company, and investment managers of investment trusts, will be treated for these purposes as a director. However, there is no presumption that all the directors (or any two or more directors) are acting in concert solely by reason of a proposed redemption or purchase by the company of its own shares, or the decision to seek shareholders' authority for any such redemption or purchase.*

##### 2. *Acquisitions of interests in shares preceding a redemption or purchase*

*The exception in Note 1 will not apply, and an obligation to make a mandatory offer may therefore be imposed, if a person (or any relevant member of a group of persons acting in concert) has acquired an interest in shares at a time when he had reason to believe that such a redemption or purchase of its own shares by the company would take place. This Note will not normally be relevant unless the relevant person has knowledge that a redemption or purchase for which requisite shareholder authority exists is being, or is likely to be, implemented (whether in whole or in part).*

##### 3. *Situations where a mandatory obligation may arise*

*Where the directors are aware that a company's redemption or purchase of its own shares would otherwise give rise to an obligation for a person (or group of persons acting in concert) to make a mandatory offer, the board of*

**RULE 37 CONTINUED****NOTES ON RULE 37.1 continued**

*directors should ensure that an appropriate resolution to approve a waiver of this obligation is put to independent shareholders prior to implementation of the relevant redemption or purchase and as a pre-condition to its implementation. Additionally, each individual director should draw the attention of the board at the time any redemption or purchase of the company's own shares is proposed, and whenever shareholders' authority for any such redemption or purchase is to be sought, to interests in shares of parties acting in concert, or presumed to be acting in concert, with that director.*

**4. Prior consultation**

*The Panel must be consulted in advance in any case where Rule 9 might be relevant. This will include any case where a person or group of persons acting in concert is interested in shares carrying 30% or more but does not hold shares carrying more than 50% of the voting rights of a company, or may become interested in 30% or more on full implementation of the proposed redemption or purchase of own shares. In addition, the Panel should always be consulted if the aggregate interests in shares of the directors and any other persons acting in concert, or presumed to be acting in concert, with any of the directors amount to 30% or more, or may be increased to 30% or more on full implementation of the proposed redemption or purchase of own shares.*

**5. Disqualifying transactions**

*Notwithstanding that the redemption or purchase of voting shares is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company:*

*(a) the Panel will not normally waive an obligation under Rule 9 if the relevant person, or any member of the relevant group of persons acting in concert, has acquired an interest in shares in the knowledge that the company intended to seek permission from its shareholders to redeem or purchase its own shares; and*

*(b) a waiver will be invalidated if any acquisitions are made by the relevant person, or by any member of the relevant group of persons acting in concert, in the period between the publication of the circular and the shareholders' meeting.*

**6. Renewals**

*Any waiver previously obtained under this Rule will expire at the same time as the relevant shareholders' authority under Chapter 4 of Part 18 of the Companies Act 2006 (whether or not voting shares have in fact been*

**RULE 37 CONTINUED****NOTES ON RULE 37.1 continued**

redeemed or purchased). Accordingly, waivers will normally need to be renewed at the same time as the relevant shareholders' authority is renewed.

**7. Responsibility for making an offer**

*If an obligation arises under this Rule for a general offer to be made and a dispensation is not granted, the prime responsibility for making an offer will normally attach to the person who obtains or consolidates control as a result of the redemption or purchase of its own shares by the company. Where control is obtained or consolidated by a group of persons acting in concert, the prime responsibility will normally attach to the principal member or members of the group acting in concert. In exceptional cases, responsibility for making an offer may attach to one or more directors if, in the view of the Panel, there has been a failure by the board as a whole, or by any one or more individual directors, to address satisfactorily the implications of a redemption or purchase by the company of its own shares in relation to interests in shares of directors or parties acting in concert with one or more of the directors.*

**8. Inadvertent mistake**

*Note 4 on the dispensations from Rule 9 may be relevant in appropriate circumstances.*

**37.2 LIMITATION ON SUBSEQUENT ACQUISITIONS**

**Subsequent to the redemption or purchase by a company of its own voting shares, all persons will be subject, in acquiring further interests in shares in the company, to the provisions of Rule 9.1.**

**NOTE ON RULE 37.2*****Calculation of percentage thresholds***

*The percentage thresholds referred to in Rule 9.1 will be calculated by reference to the outstanding voting capital subsequent to the redemption or purchase by the company of its own shares.*

## SECTION R. DEALINGS BY CONNECTED EXEMPT PRINCIPAL TRADERS

### RULE 38

#### 38.1 PROHIBITED DEALINGS

An exempt principal trader connected with an offeror or the offeree company must not carry out any dealings with the purpose of assisting the offeror or the offeree company, as the case may be.

##### **NOTE ON RULE 38.1**

###### ***Suspension of exempt status***

*Any dealings by an exempt principal trader connected with an offeror or the offeree company with the purpose of assisting an offeror or the offeree company, as the case may be, will constitute a serious breach of the Code. Accordingly, if the Panel determines that a principal trader has carried out such dealings, it will be prepared to rule that the principal trader should cease to enjoy exempt status for such period of time as the Panel may consider appropriate in the circumstances.*

#### 38.2 DEALINGS BETWEEN OFFERORS AND CONNECTED EXEMPT PRINCIPAL TRADERS

An offeror and any person acting in concert with it must not deal as principal with an exempt principal trader connected with the offeror in relevant securities of the offeree company during the offer period. It will generally be for the advisers to the offeror (including a corporate broker) to ensure compliance with this Rule rather than the principal trader. (See also Rule 4.2(b).)

##### **NOTE ON RULE 38.2**

###### ***Competition reference periods***

*During a competition reference period the restrictions in this Rule will also apply to an offeror subject to the reference and to any person acting in concert with it.*

#### 38.3 ASSENTING SECURITIES AND DEALINGS IN ASSENTED SECURITIES

An exempt principal trader connected with the offeror must not assent offeree company securities to the offer or purchase such securities in assented form until the offer is unconditional as to acceptances.

**RULE 38 CONTINUED****NOTES ON RULE 38.3****1. Withdrawal rights under Rule 13.6**

*If withdrawal rights are introduced under Rule 13.6, the acceptances in relation to any securities assented to the offer after it was unconditional as to acceptances by an exempt principal trader connected with the offeror must be withdrawn and such securities may not be re-assented to the offer unless, following the period agreed by the Panel for withdrawal rights to run, the offer becomes or is declared unconditional as to acceptances.*

**2. Schemes of arrangement**

*See Section 12 of Appendix 7.*

**38.4 VOTING**

**Securities owned by an exempt principal trader connected with an offeror or the offeree company must not be voted in the context of an offer.**

**NOTE ON RULE 38.4*****Schemes of arrangement***

*See Section 12 of Appendix 7.*

**APPENDIX 1****WHITEWASH GUIDANCE NOTE**

(See Note 1 of the Notes on Dispensations from Rule 9.)

**1 INTRODUCTION**

(a) This note sets out the procedures to be followed if the Panel is to be asked to waive the obligation to make a general offer under Rule 9 which would otherwise arise where, as a result of the issue of new securities as consideration for an acquisition or a cash injection or in fulfilment of obligations under an agreement to underwrite the issue of new securities, a person or group of persons acting in concert acquires an interest, or interests, in shares to an extent which would normally give rise to an obligation to make a general offer.

(b) Where the word “offeror” is used in a particular Rule, it should be taken in the context of a whitewash as a reference to the potential controllers. Similarly, the phrase “offeree company” should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise.

(c) Rules 19, 20, 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.

**2 SPECIFIC GRANT OF WAIVER REQUIRED**

In each case, specific grant of a waiver from the Rule 9 obligation is required. Such grant will be subject to:

(a) there having been no disqualifying transactions (as set out in Section 3 below) by the person or group seeking the waiver in the previous 12 months;

(b) prior consultation with the Panel by the parties concerned or their advisers;

(c) approval in advance by the Panel of the circular setting out the details of the proposals;

(d) approval of the proposals by an independent vote, on a poll, at a meeting of the holders of any relevant class of securities, whether or not any such meeting needs to be convened to approve the issue of the securities in question; and

(e) disenfranchisement of the person or group seeking the waiver and of any other non-independent party at any such meeting.

### APPENDIX 1 CONTINUED

#### NOTES ON SECTION 2

##### 1. Early consultation

*Consultation with the Panel at an early stage is essential. Late consultation may well result in delays to planned timetables. Experience suggests that the documents published in connection with the whitewash procedure may have to pass through several proofs before they meet the Panel's requirements and no waiver of the Rule 9 obligation will be granted until such time as the documentation has been approved by the Panel.*

##### 2. Other legal or regulatory requirements

*It must be noted that clearance of the circular in accordance with any other legal or regulatory requirement (for example, under the UKLA Rules) does not constitute approval of the circular by the Panel.*

#### 3 DISQUALIFYING TRANSACTIONS

Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company:

(a) the Panel will not normally waive an obligation under Rule 9 if the person to whom the new securities are to be issued or any person acting in concert with him has acquired any interest in shares in the company in the 12 months prior to the publication of the circular relating to the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;

(b) a waiver will be invalidated if any acquisitions of interests in shares are made in the period between the publication of the circular and the shareholders' meeting.

#### 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;

(b) full details of the maximum potential controlling position:

(i) where this is dependent upon the outcome of underwriting arrangements, it should be assumed that the potential controllers will, in addition to any other entitlement, take up their full underwriting participation; and

**APPENDIX 1 CONTINUED**

- (ii) where convertible securities, options or securities with subscription rights are to be issued, the potential controlling position must be indicated on the assumption that only the controllers will convert or exercise the subscription rights, and will do so in full and at the earliest opportunity (the date of which must also be given);
- (c) where the maximum potential shareholding resulting from the proposed transaction will exceed 50% of the voting rights of the company, specific and prominent reference to this possibility and to the fact that, subject to Section 7 below, the potential controllers may acquire further interests in shares without incurring any further obligation under Rule 9 to make a general offer;
- (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 (j) below;
- (e) a statement that the Panel has agreed, subject to shareholders' approval, to waive any obligations to make a general offer which might result from the transaction;
- (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;
- (g) Rule 16.2 (management incentivisation);
- (h) Rule 19.2 (responsibility statements, etc.);
- (i) Rule 21.2 (inducement fees and other offer-related arrangements);
- (j) Rules 23, 24.2, 24.3 and 25.3 (information which must include full details of the assets, if any, being injected);
- (k) Rules 24.4 and 25.4 (disclosure of interests and dealings). Dealings in respect of Rule 24.4 should be covered for the 12 months prior to the publication of the circular but dealings in respect of Rule 25.4 need not be disclosed as there is no offer period;

## **App 1.4**

### **APPENDIX 1 CONTINUED**

- (l) Rules 24.6 and 24.9 (arrangements in connection with the proposal);
- (m) Rule 25.5 (service contracts of directors and proposed directors);
- (n) Rule 25.7 (other information);
- (o) Rule 26 (documents to be published on a website); and
- (p) Rules 28 and 29 (profit forecasts, quantified financial benefits statements and asset valuations relating to the offeree company or relating to assets being acquired by the offeree company).

### **5 UNDERWRITING AND PLACING**

In cases involving the underwriting or placing of offeree company securities, the Panel must be given details of all the proposed underwriters or placees, including any relevant information to establish whether or not there is a group acting in concert, and the maximum percentage which they could come to hold as a result of implementation of the proposals.

### **6 ANNOUNCEMENTS FOLLOWING SHAREHOLDERS' APPROVAL**

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

(b) Where the final controlling position is dependent on the results of underwriting, the offeree company must make an announcement following the issue of the new securities stating the number and percentage of shares in which the controllers are interested at that time.

(c) Where convertible securities, options or securities with subscription rights are to be issued:

(i) the announcement of the potential controlling position must be made on the basis of the assumptions described in Section 4(b) above;

(ii) following each issue of new securities a further announcement must be made confirming the number and percentage of shares in which the controllers are interested at that time; and

(iii) the information in (i) and (ii) should be included in the company's annual report and accounts until all the securities in

**APPENDIX 1 CONTINUED**

respect of which the waiver has been granted have been issued or it is confirmed that no such issue will be made.

**NOTE ON SECTION 6*****Copies of announcements***

*Copies of announcements made under this Section should be sent to the Panel.*

**7 SUBSEQUENT ACQUISITIONS BY POTENTIAL CONTROLLERS**

Immediately following approval of the proposals at the shareholders' meeting, the potential controllers will be free to acquire further interests in shares of the offeree company, subject to the provisions of Rules 5 and 9.

Where shareholders approve the issue of convertible securities, or the issue of warrants or the grant of options to subscribe for new shares where no immediate voting rights are obtained, the Panel will view the approval as sanctioning maximum conversion or subscription at the earliest possible moment without the necessity for the making of an offer under Rule 9. However, if the potential controllers propose to acquire further interests in voting shares following the relevant meeting, the Panel should be consulted to establish the number of shares to which the waiver will be deemed to apply.

(See also Note 4 on Rule 9.1 and Rule 37.1.)

## APPENDIX 2

### FORMULA OFFERS GUIDANCE NOTE

#### 1 INTRODUCTION

When offers are made for the share capital of investment trusts, it is common for the consideration to be calculated by reference to a formula related to the net assets of the offeree company. If offers are made on this basis, there are certain special requirements which must be followed.

#### 2 SPECIFICATION OF THE FORMULA

Since it is common for the result of the formula to differ from net asset value as generally understood, the term “net asset value” should not be used in connection with the consideration to be paid to shareholders. The expression “formula asset value” should be used instead. Where the consideration is expressed by reference to formula asset value, the means by which this figure will be arrived at must be clearly set out in both the offer announcement and the offer document. It will usually be convenient to express this formula algebraically, identifying the significant constituent elements, in a separate appendix.

The Panel does not consider it appropriate to insist on a standard method of calculating net asset values in formula offers. There is, however, a danger of confusion being caused when assessing the advantages or disadvantages of an offer by reference to net asset values which are calculated by each side on a different basis. Principals and their advisers should, therefore, ensure that wherever reference is to be made to net asset value as an argument for or against an offer, the utmost clarity is used to make plain the basis of calculation. This applies to paid advertisements in the press as well as to documents and announcements published in connection with an offer.

#### 3 DATE ON WHICH THE FORMULA CRYSTALLIZES

In all circumstances, the consideration payable under the formula should be determined as at the day the offer becomes or is declared unconditional as to acceptances or, in the case of a scheme of arrangement, as at a date which is a fixed number of days prior to the court sanction hearing (in either case, the “FAV calculation date”).

#### **NOTE ON SECTION 3**

##### ***Schemes of arrangement***

*In the case of a scheme, the FAV calculation date should normally be set for a date no earlier than seven days prior to the date of the court sanction hearing (as defined in Appendix 7). The Panel should be consulted if this is impracticable.*

### **APPENDIX 2 CONTINUED**

#### **4 ESTIMATE OF THE FORMULA OFFER VALUE**

The offer announcement must include an estimate of the value of the offer, in pence per share, on the day of the announcement and the offer document must include a similar estimate on the latest practicable date prior to publication.

#### **5 MAXIMUM AND MINIMUM PRICES**

An offeror may include in a formula offer a term that if the formula offer produces a price higher than a specified price (the “maximum price”) only that price will be paid and/or a term that if it produces a price lower than a specified price (the “minimum price”) then that price will be paid.

#### **6 RULE 6**

Since in a formula offer the current value of the offer is only determinable by reference to the value, at any relevant time, of the assets to which the formula is related, an offeror can only be confident that acquisitions of interests in shares during an offer are in conformity with Rule 6 if it is able to calculate the price which would have been payable on the basis of the formula at the time of the acquisitions. Where such calculation is possible and the price paid exceeds the formula price so calculated, it follows that the acquisitions will have been made on the basis of an improved formula and the offeror will, therefore, be required to increase the offer by making the improved formula generally available.

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 investment analysts’ circulars. Where there is no co-operation from the board of the offeree company, therefore, the offeror will not be able to use this procedure and any acquisitions which fall to be taken into account for the purposes of Rule 6 will create an obligation to pay at least the same price to all accepting shareholders. Where there are alternative offers, however, the offeror may choose which of the alternatives should be subject to the minimum price.

#### **7 RULES 9 AND 11**

Rules 9 and 11 apply equally to formula offers; thus, if appropriate, the cash offer must contain a term guaranteeing a minimum price under the offer at the highest cash price paid in respect of the acquisitions of interests in shares to which the Rules apply.

**APPENDIX 2 CONTINUED****8 “FLOOR AND CEILING” CONDITIONS**

There is no objection to the incorporation of conditions in a formula offer which provide for the offer to lapse in the event that the formula asset value (calculated on the FAV calculation date) falls outside specified limits or if movements in certain securities markets' indices exceed specified limits.

**9 OFFEREE BOARD OBLIGATIONS**

There is no obligation on the board of the offeree company to provide information relating to the calculation of the formula price until a successful offeror has taken control. Nevertheless, where an offer has a “floor and ceiling” condition related to the formula asset value, the board of the offeree company must announce, within 7 days after the FAV calculation date, whether the formula calculated on the FAV calculation date fell within the specified limits.

Once an offer is wholly unconditional, it is expected that both sides will co-operate in calculating the formula price payable to accepting shareholders. Where agreement is not forthcoming, however, the offeror will not be permitted to determine unilaterally the price payable. Where such circumstances could arise, the offer should provide for an interim payment to be made to accepting shareholders of not less than 85% of the offeror's best estimate of the formula price payable. When the offeror is able to calculate correctly the price payable, the difference should be paid to accepting shareholders as soon as possible; any excess paid to shareholders as a result of an over-estimate of the formula asset value will not be recoverable.

**APPENDIX 3****DIRECTORS' RESPONSIBILITIES AND CONFLICTS OF INTEREST GUIDANCE NOTE****1 DIRECTORS' RESPONSIBILITIES**

While a board of directors may delegate the day-to-day conduct of an offer to individual directors or a committee of directors, the board as a whole must ensure that proper arrangements are in place to enable it to monitor that conduct in order that each director may fulfil his responsibilities under the Code. These arrangements should ensure that:

- (a) the board is provided promptly with copies of all documents and announcements published by or on behalf of their company which bear on the offer; the board receives promptly details of all dealings in relevant securities made by their company or any persons acting in concert with it and details of any agreements, understandings, guarantees, expenditure (including fees) or other obligations entered into or incurred by or on behalf of their company in the context of the offer which do not relate to routine administrative matters;
- (b) those directors with day-to-day responsibility for the offer are in a position to justify to the board all their actions and proposed courses of action; and
- (c) the opinions of advisers are available to the board where appropriate.

The above procedures should be followed, and board meetings held, as and when necessary throughout the offer in order to ensure that all directors are kept up-to-date with events and with actions taken.

Any director who has a question concerning the propriety of any action as far as the Code is concerned should ensure that the Panel is consulted.

The Panel expects directors to co-operate with it in connection with its enquiries; this will include the provision, promptly on request, of copies of minutes of board meetings and other information in their possession, or in the possession of an offeror or the offeree company as appropriate, which may be relevant to the enquiry.

### APPENDIX 3 CONTINUED

## 2 FINANCIAL ADVISERS AND CONFLICTS OF INTEREST

Instances where conflicts of interest may arise include those resulting from the possession of material confidential information or where the adviser is part of a multi-service financial organisation, as exemplified below.

### *(a) Material confidential information*

A financial adviser may have the opportunity to act for an offeror or the offeree company in circumstances where the adviser is in possession of material confidential information relating to the other party, for example, because it was a previous client or because of involvement in an earlier transaction. In certain circumstances, this may necessitate the financial adviser declining to act, for example, because the information is such that a conflict of interest is likely to arise. Such a conflict may be incapable of resolution simply by isolating information within the relevant organisation or by assigning different personnel to the transaction; however, when a financial adviser has been actively advising a company which becomes an offeree company, it may be acceptable for it to continue to act.

### *(b) Segregation of businesses*

It is incumbent upon multi-service financial organisations to familiarise themselves with the implications under the Code of conducting other businesses in addition to, for example, corporate finance or stockbroking. If one part of such an organisation is involved in an offer, for example, in giving advice to an offeror or the offeree company, a number of Rules of the Code may be relevant to other parts of that organisation, whose actions may have serious consequences under the Code. Compliance departments of such organisations have an important role in this respect and are encouraged to liaise with the Panel in cases of doubt.

The concepts of “exempt fund managers” and “exempt principal traders” in the Code are in recognition of the fact that fund management and principal trading may be conducted on a day-to-day basis quite separately within the same organisation; but it is necessary for such organisations to satisfy the Panel that this is the case. It is essential, therefore, that such organisations arrange their affairs to ensure not only total segregation of those operations but also that those operations are conducted without regard for the interests of other parts of the same organisation or of their clients. The Code contains a number of Rules which are designed to ensure that the principles on which these concepts are based are upheld.

**APPENDIX 4****RECEIVING AGENTS' CODE OF PRACTICE**

*NB 1 This Appendix should be read in conjunction with Rules 9.3 and 10 and, in particular, Notes 4 – 8 on Rule 10.*

*NB 2 If an offer relates to securities some or all of which are held in uncertificated form in CREST and in respect of which CREST maintains the register, references in this Appendix to the register shall be deemed to be references to:*

- (a) the register of securities held in certificated form (if any); and*
- (b) the record of securities held in uncertificated form maintained by the offeree company's registrar.*

**1 INTRODUCTION**

**This Code of Practice has been drawn up by the Panel in consultation with the Registrars Group of the Institute of Chartered Secretaries and Administrators.**

**It is essential when determining the result of an offer under the Code that appropriate measures are adopted such that all parties to the offer may be confident that the result of the offer is arrived at by an objective procedure which, as far as possible, eliminates areas of doubt. This Code of Practice is designed to ensure that those acceptances and purchases which may be counted towards fulfilling the acceptance condition and thus included in the certificate are properly identified to enable the receiving agent to provide the certificate required by Note 7 on Rule 10. Receiving agents are also required to establish appropriate procedures such that acceptances and purchases can be checked against each other and between different categories so that no shareholding will be counted twice.**

**The principles and procedures outlined in this Code of Practice are, except with the prior consent of the Panel, to be followed in all cases. It must be understood that the Panel expects co-operation between the offeree company's registrar and the offeror's receiving agent to ensure that the procedures can be undertaken in a timely manner. Co-operation is interpreted to include the provision of data in a form convenient for the receiving agent. For example, if the receiving agent so requests, following the announcement of an offer, the registrar should, if practicable, provide the register in electronic form. Whenever possible, if requested to do so, the registrar should provide, in similar form, details of changes to the register rather than a complete new register.**

## **App 4.2**

### **APPENDIX 4 CONTINUED**

Receiving agents will have direct access to the Panel should they believe that there is insufficient co-operation or that they are being given instructions contrary to this Code of Practice.

### **2 QUALIFICATIONS FOR ACTING AS A RECEIVING AGENT**

A receiving agent to an offer must either:

(a) be a member of the Registrars Group of the Institute of Chartered Secretaries and Administrators and:

- (i) (1) be responsible for the share register of a listed public company, other than itself, with not less than 20,000 shareholders; or  
(2) be responsible for the share registers of not less than 25 public companies which are admitted to trading on a UK regulated market or multilateral trading facility; and
- (ii) (1) have performed the duties of a receiving agent on more than 25 occasions; or  
(2) have been directly involved with keeping share registers of public companies for more than 10 years; or

(b) be an organisation which has satisfied the Panel that it has the experience and resources necessary to act as receiving agent in connection with the relevant offer.

### **3 THE PROVISION OF THE OFFEREE COMPANY'S REGISTER**

(a) When a firm intention to make an offer is announced, the offeree company should instruct its registrar to respond within two business days to a request from the offeror for the provision of the register which should be updated to reflect the position as at the close of business on the date of the request. The registrar should provide details of both participant and account IDs for holdings in CREST.

(b) The offeree company's registrar should also be instructed to keep the register as up-to-date as the register maintenance system will allow. CREST imposes certain obligations on registrars in this respect but for certificated holdings outside CREST the registrar should ensure that maintenance is such that it can comply with (c) below. The updating procedures should include, in addition to the registration of transfers, the registration of all changes affecting the register (eg grants of

**APPENDIX 4 CONTINUED**

representation, marriage certificates, changes of address, court orders etc.). The receiving agent should also be informed on a daily basis by the offeree company's registrar of any adjustment to holdings in CREST not advised by the CREST operator through register update requests ("RURs").

(c) From the date following the day on which a firm intention to make an offer is announced, the CREST operator will, after the appropriate request, make available to the offeror's receiving agent copies of all RURs generated in relation to the offeree company.

As far as certificated holdings are concerned, the registrar must provide updates, on a daily basis, to the register within two business days after notification of the transfer and, in addition, copies of all documents, including CREST stock deposits, which would lead to a change in the last copy register provided to the offeror must be provided as rapidly. On the final register day\* any such information received by the offeree company's registrar but not yet provided to the offeror's receiving agent must be made available electronically, where possible, or for collection by the offeror's receiving agent, at the latest, by noon on the day preceding the final closing date† of the offer.

From the final register day\* until the time that the offer becomes or is declared unconditional as to acceptances or lapses, the offeree company's registrar should continue to update the register on a daily basis so that all transfers and other documents which have been received by the offeree company's registrar by 1.00 pm on the final closing date‡ of the offer are processed by 5.00 pm that day at the latest. In addition, copies of these documents should be sent immediately and electronically, where possible, to the offeror's receiving agent insofar as not previously notified.

(d) Arrangements should be made to ensure that the offeror's receiving agent has access to the offeree company's registrar at all times, which includes weekends and Bank Holidays, during the period between the final register day\* and the time the offer becomes or is declared unconditional as to acceptances or lapses, in order that any queries arising from acceptances and purchases can be investigated and accurate decisions taken.

\*† See definitions at end of Appendix

### **APPENDIX 4 CONTINUED**

#### **4 THE PROVISION OF ADDRESSES, ELECTRONIC ADDRESSES, ELECTIONS AND OTHER DETAILS**

(a) When a firm intention to make an offer is announced, the offeree company should respond, or instruct its registrar to respond, within two business days to a request from the offeror for details in respect of:

(i) electronic addresses provided to the offeree company by shareholders in the offeree company for the receipt of documents, announcements and other information in electronic form;

(ii) addresses, electronic addresses and other information provided to the offeree company by, or on behalf of, persons with information rights for the receipt of documents, announcements and other information in hard copy form or electronic form;

(iii) addresses, electronic addresses and other information provided to the offeree company by any other persons entitled to receive copies of documents, announcements or information for the receipt of such communications in hard copy form or electronic form (including a copy of any register(s) of persons entitled to receive documents under Rule 15); and

(iv) elections made in accordance with applicable legal or regulatory provisions by, or on behalf of, shareholders in the offeree company, persons with information rights or any other relevant persons to receive communications from the offeree company in hard copy form,

provided, in each case, that the relevant address, electronic address, election or other information has been provided to the offeree company for the receipt of information generally and not only for certain specific types of information.

(b) The information provided to an offeror in compliance with (a) above should be updated to reflect the position as at the close of business on the day of the request. The offeree company shall ensure, or shall instruct its registrar to ensure, that the information described in (a) above is kept as up-to-date as the relevant maintenance system will allow and updates shall be provided to the offeror, or its receiving agent, in respect of any changes in that information at the same time as updates to the company's register are provided under Section 3 above to the offeror's receiving agent.

**APPENDIX 4 CONTINUED**

(c) When the information referred to in (a) above is provided to an offeror by the offeree company or its registrar, the use of that information by the offeror for purposes that are not related to the offer may be subject to legal restrictions, including in relation to the protection of data.

**5 COUNTING OF ACCEPTANCES**

The offeror's receiving agent must ensure that all acceptances counted as valid meet the requirements set out in Note 4 on Rule 10 and, if appropriate, Note 6 on Rule 10.

**6 COUNTING OF PURCHASES**

The offeror's receiving agent must ensure that all purchases counted as valid meet the requirements (subject to Note 8 on Rule 10) set out in Note 5 on Rule 10 and, if appropriate, Note 6 on Rule 10.

**7 OFFERS BECOMING OR BEING DECLARED UNCONDITIONAL AS TO ACCEPTANCES BEFORE THE FINAL CLOSING DATE†**

Prior to an offer becoming or being declared unconditional as to acceptances before the final closing date<sup>†</sup>, the offeror's receiving agent must ensure that the requirements of Note 6 on Rule 10 have been satisfied.

**8 DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES**

Certificates issued by the offeror's receiving agent should be unqualified, save for a disclaimer (if necessary) as to limitations on the responsibility of the receiving agent for the errors of third parties which are not evident from the documents available to the receiving agent. A disclaimer in the following form would normally be acceptable; any variation should be specifically agreed by the Panel in advance:

"In issuing this certificate we have, where necessary, relied on the following matters:

- (i) certifications of acceptance forms by the offeree company's registrar;
- (ii) certifications by the offeree company's registrar that a transfer of shares has been executed by or on behalf of the registered holder in favour of the offeror company or its nominees;

<sup>†</sup> See definitions at end of Appendix

## **App 4.6**

### **APPENDIX 4 CONTINUED**

(iii) confirmation from the offeror of the validity of shares recorded as registered holdings and purchases in the context of Note 8 on Rule 10.

As the offeror company's receiving agent and escrow agent, we have examined with due care and attention the information provided to us, and, as appropriate, made due and careful enquiry of relevant persons, in order that we may issue this certificate and have no reason to believe that the information contained in it cannot be relied upon but, subject thereto, we accept no responsibility or liability whatsoever in respect of any error of Euroclear UK & Ireland Limited, the offeree company's registrar or the offeror company's buying broker for the matters set out above to the extent that we have relied upon them in issuing this certificate."

#### **DEFINITIONS**

*\*final register day — the day two days prior to the final closing date<sup>1</sup> of an offer.*

*<sup>1</sup>final closing date — the 60th day or other date beyond which the offeror has stated that its offer will not be extended.*

**APPENDIX 5****TENDER OFFERS****1 PANEL'S CONSENT REQUIRED**

The Panel's consent is required for any tender offer. The Panel's consent will normally be granted where:

(a) the tender offer could not result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of the company on the closing date of the tender; or

(b) the tender offer is by a person holding shares carrying more than 50% of the voting rights of a company, is for less than all the shares carrying voting rights held by the minority and the Panel believes the circumstances justify the use of a tender offer.

Where a tender offer to which this Appendix applies is made on a UK regulated market or multilateral trading facility, this Appendix takes precedence over any requirements of the relevant market or facility for the conduct of tender offers. However, the resulting transactions will be subject to the relevant trade and transaction reporting rules and requests for delivery and settlement.

This Appendix does not apply where a tender offer is made solely for the purpose of a company buying in its own shares.

**NOTES ON SECTION 1****1. Calculation of percentage of shares in which a person is interested**

*The percentage of shares in which a person is interested should be calculated by reference to the issued share capital at the time of the announcement of the tender offer after taking into account the latest published information; if, however, it is known at the time of the announcement that by the closing date of the tender offer the issued share capital will have changed, this must also be taken into account.*

**2. Tender offers in competition with other types of offer under the Code**

*Where a tender offer is proposed for shares in a company subject to another type of offer under the Code, the following matters will have to be considered:*

(a) *extension of the offer period in respect of the other offer;*

(b) *sending the tender advertisement to all shareholders and persons with information rights; and*

(c) *disclosure of positions and dealings by the offeror making the tender offer and any persons treated as acting in concert with it in the manner set out in Rule 8.*

### **APPENDIX 5 CONTINUED**

#### **2 PROCEDURE AND CLEARANCE**

(a) A person publishing a tender offer for the shares of a company which are admitted to trading on a UK regulated market or multilateral trading facility must do so by paid advertisement in two national newspapers and must notify the company concerned of the information specified in Section 3 at least 7 days before the day on which the tender offer closes. The offeror may also send copies of the advertisement to shareholders of the company and persons with information rights, subject to compliance with the FSMA.

(b) In all other cases, the tender offer must be made by sending a circular to shareholders and persons with information rights (containing the same information as for a tender offer advertisement as specified in Section 3) and must be open for acceptance for at least 21 days. A copy of the circular must be provided to the company concerned not later than the date on which it is published.

(c) Subject to (d) below, the offeror must treat all shareholders on equal terms.

(d) A tender offer must be for cash only but may be at a fixed price or a maximum price; top-up arrangements are not permitted.

(i) Fixed price: if the tenders exceed the number of shares sought, they will be scaled down pro rata.

(ii) Maximum price: if the tender offer is over-subscribed, the striking price will be the lowest price at which the number of shares sought is met and all who tender at or below the striking price will receive that price. If necessary, tenders made at the striking price will be scaled down pro rata or balloted.

If the tender offer is under-subscribed, all who tender will receive the maximum or fixed price, except where fewer shares are tendered than the percentage below which the tender is void.

(e) The text of the advertisement or circular must be cleared by the Panel.

(f) In every case the UKLA, the relevant regulated market or multilateral trading facility and the Panel must be sent a copy of the final text of the advertisements or circulars in hard copy form and electronic form at the same time as they are sent to the newspapers or are published.

**APPENDIX 5 CONTINUED****3 DETAILS OF TENDER OFFER ADVERTISEMENTS**

(a) The advertisement of a tender offer or circular (as the case may be), which must constitute a firm offer, must include the particulars set out below:

- (i) the name of the offeror;
- (ii) the name of the broker or other agent acting for the offeror;
- (iii) the name of the company whose shares are sought;
- (iv) the maximum number of shares or proportion of voting capital offered for;
- (v) a statement that, if tenders totalling less than 1% of the voting rights of the company are received, the tender offer will be void. Alternatively, the offeror may indicate a higher percentage below which the tender offer will be void but any figure higher than 5% is not permitted unless approved by the Panel in advance of the announcement of the tender offer;
- (vi) a statement that, subject to (v), a shareholder's tender will be irrevocable;
- (vii) the fixed or maximum price offered;
- (viii) the number and percentage of shares in which the offeror and persons acting in concert with it are interested, specifying the nature of the interests concerned (see Note 5 on Rule 8);
- (ix) the closing day and time for the tender; and
- (x) the arrangements for delivery and settlement (on a basis approved in advance by the Panel).

(b) A tender offer may not be subject to any condition other than (a)(v) above.

(c) If the offeror wishes to make a statement about its future intentions, it must be contained in the advertisement of the tender offer or circular, as the case may be, and should be explicit and unambiguous. The Panel should be consulted in advance with regard to any such statement.

(d) If the offeror wishes, a statement may be made comparing the value of the tender offer with the market value of the shares being offered for.

## **App 5.4**

### **APPENDIX 5 CONTINUED**

(e) The advertisement or circular must be restricted to the items above together with any information required under the FSMA, secondary legislation made under the FSMA or any rule made by the FCA.

#### **NOTES ON SECTION 3**

##### **1. Future offers**

*If the offeror or a person acting in concert with it makes a statement which implies that the offeror does not intend to make an offer for the company, Rule 2.8 will apply.*

##### **2. Limit on contents of tender advertisements and circulars**

*The limit on the amount of information permissible in tender advertisements and circulars is strictly enforced; no form of argument or persuasion is allowed. Consequently the offeror (or any person acting in concert with it) may not make any statement or otherwise publish any information in connection with the tender offer which is not already contained in the tender offer advertisement or circular itself.*

#### **4 CIRCULARS FROM THE BOARD OF THE OFFEREE COMPANY**

A copy of any document published by the board of the offeree company in connection with the tender offer must be sent to the Panel in hard copy form and electronic form at the same time as it is published.

#### **5 ANNOUNCEMENT OF THE RESULT OF A TENDER OFFER**

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

#### **6 PROHIBITION OF FURTHER TRANSACTIONS DURING A TENDER OFFER**

The offeror and any person acting in concert with it may not otherwise acquire or dispose of any interest in shares carrying voting rights in the company between the time of the publication of the tender offer and the time when the result of the tender offer is announced.

## APPENDIX 6

**BID DOCUMENTATION RULES FOR THE PURPOSES OF  
SECTION 953 OF THE COMPANIES ACT 2006**

For the purposes of Section 953 of the Companies Act 2006, “offer document rules” and “response document rules” are those giving effect, respectively, to Article 6(3) and the first sentence of Article 9(5) of the Directive (see section 10(e) of the Introduction). The relevant parts of Rules 24 and 25 are set out below. Rule 27 is also relevant to the extent set out in section 10(e) of the Introduction.

**“Offer document rules”**

<b>Article</b>	<b>Those parts of the Rule set out below which give effect to the Article</b>
<i>Article 6(3)(a)</i>	<b>Rule 24.3(d)(v)</b>
<i>Article 6(3)(b)</i>	<b>Rule 24.3(d)(ii)</b>
<i>Article 6(3)(c)</i>	<b>Rule 24.3(d)(iv)</b>
<i>Article 6(3)(d)</i>	<b>Rule 24.3(d)(v) and Note 4 on Rule 24.3</b>
<i>Article 6(3)(e)</i>	<b>Rule 24.3(d)(xiv)</b>
<i>Article 6(3)(f)</i>	<b>Rule 24.3(d)(iv)</b>
<i>Article 6(3)(g)</i>	<b>Rule 24.4(a)(i), (ii)</b>
<i>Article 6(3)(h)</i>	<b>Rule 24.3(d)(vi)</b>
<i>Article 6(3)(i)</i>	<b>Rule 24.2</b>
<i>Article 6(3)(j)</i>	<b>Rule 24.7 (first phrase)</b>
<i>Article 6(3)(k)</i>	<b>Rule 24.3(d)(xi)</b>
<i>Article 6(3)(l)</i>	<b>Rule 24.3(f)</b>
<i>Article 6(3)(m)</i>	<b>Rule 24.3(d)(iii) and Note 3 on Rule 24.3</b>
<i>Article 6(3)(n)</i>	<b>Rule 24.3(d)(xiii)</b>

**“Response document rules”**

<i>Article 9(5), first sentence</i>	<b>Rule 25.1 and Rule 25.2(a)</b>
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**APPENDIX 7****SCHEMES OF ARRANGEMENT****DEFINITIONS AND INTERPRETATION****Court sanction hearing**

The hearing of the court to sanction a scheme of arrangement.

**Effective date**

Effective date means:

- (a) the date on which the order of the court sanctioning the scheme is delivered to the registrar of companies for registration; or
- (b) if later, the date on which the order of the court confirming any associated reduction of capital and statement of capital are delivered to the registrar of companies for registration or, if the court so orders, the date on which they are registered.

**Long-stop date**

The date stated in the scheme circular to be the latest date by which the scheme must become effective and included as such in the terms of the scheme.

**Offer documents and offeree board circulars**

In the case of a scheme of arrangement, references in the Code to an offer document or to the offeree board circular (and related expressions) shall be construed as references to the scheme circular and references to a revised offer document or to a subsequent offeree board circular (and related expressions) shall be construed as references to any supplementary scheme circular.

**Shareholder meetings**

The meeting of shareholders in the offeree company (or meetings of relevant classes of shareholders) convened by the court to consider a resolution to approve a scheme of arrangement and any general meeting of the offeree company (and related class meetings) convened to consider any resolution to approve or give effect to a scheme.

**1 APPLICATION OF THE CODE TO SCHEMES OF ARRANGEMENT**

**The provisions of the Code apply to an offer effected by means of a scheme of arrangement in the same way as they apply to an offer effected by means of a contractual offer, except as set out in this Appendix 7.**

## APPENDIX 7 CONTINUED

### 2 MANDATORY OFFERS

An obligation to make a mandatory offer under Rule 9 may not be satisfied by way of a scheme of arrangement except with the prior consent of the Panel.

#### NOTES ON SECTION 2

##### 1. When the Panel's consent may be granted

*Factors which the Panel will take into account when considering an application to satisfy a mandatory offer obligation by way of a scheme include the views of the offeree board and its independent adviser and the likely timetable of the scheme.*

*If the Panel permits the mandatory offer obligation to be so satisfied and the scheme lapses for a reason which would not have caused a contractual offer to lapse, the Panel will require the offeror to make a new contractual offer immediately in compliance with Rule 9. The scheme circular must include a statement by the offeror that, if the scheme lapses for such a reason, the offeror will make a new contractual offer as required by the Panel. In such circumstances Rule 9.7 will apply.*

##### 2. Triggering Rule 9 during a scheme

*Where an offeror is implementing its offer by way of a scheme of arrangement, the offeror and persons acting in concert with it may acquire an interest in shares which causes the offeror to have to extend a mandatory offer under Rule 9 only if the offeror has obtained the Panel's prior consent either to satisfy its mandatory offer obligation by way of a scheme or to switch to a contractual offer (see Section 8 of this Appendix 7).*

### 3 EXPECTED SCHEME TIMETABLE

**(a) Where an offeror announces a firm intention to make an offer which is to be implemented by means of a scheme of arrangement and the board of the offeree company agrees to the inclusion of a statement of its intention to recommend the scheme in that announcement, then the offeree company must, except with the consent of the Panel, ensure that the scheme circular is sent to shareholders and persons with information rights within 28 days of that announcement. If the offeree company board subsequently withdraws its recommendation, this obligation will cease.**

**(b) The parties to the offer are permitted to include within the conditions to the scheme:**

- (i) a long-stop date by which the scheme must become effective (unless extended with the agreement of the parties to the offer);**

**APPENDIX 7 CONTINUED**

- (ii) a specific date by which the shareholder meetings must be held (unless extended with the agreement of the parties to the offer), provided that the date specified must be more than 21 days after the expected date of the shareholder meetings to be set out in the scheme circular; and
  - (iii) a specific date by which the court sanction hearing must be held (unless extended with the agreement of the parties to the offer) provided that the date specified must be more than 21 days after the expected date of the court sanction hearing to be set out in the scheme circular.
- (c) Any condition referred to in paragraph (b) above:
  - (i) must be given prominent reference in the offeror's announcement of a firm intention to make an offer;
  - (ii) must not be capable of being invoked or waived after the date specified unless extended with the agreement of the parties to the offer; and
  - (iii) will not be subject to Rule 13.5(a).
- (d) The offeree company must ensure that the scheme circular sets out the expected timetable for the scheme, including the expected dates and times for the following:
  - (i) the record date for any shareholder meeting;
  - (ii) the latest date and time for the lodging of forms of proxy or elections for any alternative form of consideration;
  - (iii) the date and time of any shareholder meetings, which must normally be convened for a date which is at least 21 days after the date of the scheme circular;
  - (iv) the date and time of any meetings of the shareholders of the offeror to be convened in connection with the offer;
  - (v) the date of the court sanction hearing;
  - (vi) the record date for the purposes of the scheme and/or any reduction of capital provided for by the scheme;
  - (vii) the date and time of any proposed suspension in trading of shares or other securities of the offeree company;
  - (viii) the date of any court hearing to confirm any reduction of capital provided for by the scheme;

## **App 7.4**

### **APPENDIX 7 CONTINUED**

- (ix) the effective date;
  - (x) the date and time of the admission to trading of any offeror securities to be issued in connection with the scheme; and
  - (xi) the long-stop date.
- (e) Upon publication of the scheme circular, the offeree company must announce in accordance with Rule 2.9 that the scheme circular has been published and include in that announcement the expected timetable, including the expected dates and times referred to in paragraph (d) above.
- (f) The offeree company must implement the scheme in accordance with the expected timetable, as published (subject to any change to the expected timetable announced in accordance with Section 6 below), unless:
- (i) the board of the offeree company withdraws its recommendation of the scheme;
  - (ii) the board of the offeree company announces its decision to propose an adjournment of a shareholder meeting or the court sanction hearing;
  - (iii) a shareholder meeting or the court sanction hearing is adjourned; or
  - (iv) any condition to the scheme is invoked by the offeror in accordance with the Code.

See also Note 2 on Section 8 below.

#### **4 HOLDING STATEMENTS**

- (a) 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 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,

**APPENDIX 7 CONTINUED**

the Panel may permit 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.

**5 ANNOUNCEMENTS FOLLOWING KEY EVENTS IN A SCHEME**

(a) If the parties to the offer include any condition to the scheme in accordance with Section 3(b) above and any such condition is not capable of being satisfied by the date specified in that condition, the offeror must make an announcement as soon as practicable and, in any event, by no later than 8.00 am on the business day following the date so specified, stating whether the offeror has invoked that condition, waived that condition or, with the agreement of the offeree company, specified a new date by which that condition must be satisfied.

(b) As soon as practicable after the votes on the relevant resolutions at the shareholder meetings and, in any event, by no later than 8.00 am on the business day following the shareholder meetings, the offeree company must make an announcement stating whether or not the resolutions were passed by the requisite majorities (and, if not, whether or not the scheme has lapsed) and giving details of the voting results in relation to the meetings, including:

(i) in the case of any general meeting of the offeree company convened to consider any resolution to approve or give effect to the scheme, if a poll was taken, the number of shares of each class which were voted for and against the resolutions and the percentage of the shares voted which those numbers represent; and

(ii) in the case of each court-convened meeting:

(a) the number of shareholders of the class who voted for and against the resolution to approve the scheme and the percentage of those voting shareholders which those numbers represent;

(b) the number of shares of the class which were voted for and against the resolution to approve the scheme and the percentage of the total shares voted which those numbers represent; and

(c) the percentage of the issued shares of the class which the shares voted for and against the resolutions represent.

### **APPENDIX 7 CONTINUED**

(c) As soon as practicable following the court sanction hearing, the offeree company must make an announcement stating the decision of the court and including details of whether the scheme will proceed or has lapsed.

(d) As soon as practicable on the effective date, the offeree company or the offeror must make an announcement stating that the scheme has become effective.

### **6 CHANGES TO THE EXPECTED SCHEME TIMETABLE**

(a) Any adjournment of a shareholder meeting or court sanction hearing, or a decision by the offeree board to propose such an adjournment, must be announced promptly by the offeree company in accordance with the requirements of Rule 2.9. If the meeting or hearing is adjourned to a specified date, the announcement should set out the relevant details. If the meeting or hearing is adjourned without at the same time specifying a date for the adjourned meeting, a further announcement should be made in accordance with the requirements of Rule 2.9 once the new date has been set.

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

(c) In all cases, the Panel should be consulted as to whether notice of an adjournment of any meeting or hearing or any other delay in, or change to, the expected timetable should, in addition, be sent to offeree company shareholders and persons with information rights.

### **7 REVISION**

Any revision to a scheme of arrangement should normally be made by no later than the date which is 14 days prior to the date of the shareholder meetings (or any later date to which such meetings are adjourned). The consent of the Panel must be obtained if it is proposed to make any revision to a scheme either:

(a) less than 14 days prior to the date of the shareholder meetings (or any later date to which such meetings are adjourned); or

(b) following the shareholder meetings.

### **8 SWITCHING**

(a) With the consent of the Panel, the offeror may switch from a scheme of arrangement to a contractual offer or from a contractual offer to a scheme of arrangement, whether or not the offeror has reserved the right to change the structure of the offer.

**APPENDIX 7 CONTINUED**

- (b) The Panel will determine the offer timetable that will apply following any switch to which it consents.**
- (c) The offeror must announce a switch in accordance with the requirements of Rule 2.9. The announcement must include:**
- (i) details of all changes to the terms and conditions of the offer as a result of the switch;**
  - (ii) details of any material changes to the other details originally announced pursuant to Rule 2.7(c);**
  - (iii) an explanation of the offer timetable applicable following the switch (as determined by the Panel); and**
  - (iv) an explanation of whether or not any irrevocable commitments or letters of intent procured by the offeror or any person acting in concert with it will remain valid following the switch.**

**NOTES ON SECTION 8****1. Determination of the offer timetable following a switch**

*Factors which the Panel may take into account when determining the offer timetable that will apply following a switch include:*

- (a) the time required to enable shareholders in the offeree company to reach a properly informed decision;*
- (b) the time which has elapsed since the switching offeror's original announcement under Rule 2.7 and the extent to which it is reasonable for the offeree board to be hindered in the conduct of its affairs;*
- (c) the views of the offeree board and the switching offeror; and*
- (d) the likely effect of the new offer timetable on any competing offeror.*

**2. Consequences of a withdrawal of recommendation etc.**

*Where:*

- (a) the board of the offeree company withdraws its recommendation of the scheme;*
- (b) the board of the offeree company announces its decision to propose an adjournment to a shareholder meeting or the court sanction hearing;*
- (c) any shareholder meeting or the court sanction hearing is adjourned; or*
- (d) the Panel considers that the offeree company has not implemented the scheme in accordance with the published timetable,*

### APPENDIX 7 CONTINUED

#### NOTES ON SECTION 8 *continued*

*the Panel will normally consent to a request from the offeror to switch to a contractual offer with an acceptance condition set at up to 90% of the shares to which the offer relates.*

### 9 ALTERNATIVE CONSIDERATION

(a) If a scheme of arrangement permits shareholders to elect to receive any alternative form of consideration, or to elect, subject to the election of others, to vary the proportions in which they receive different forms of consideration, the ability of shareholders to make such elections must not be closed off or withdrawn before the shareholder meetings.

(b) A shareholder who has elected to receive a particular form of consideration in respect of any of his shares must be entitled to withdraw his election. However, this right may be shut off not earlier than one week prior to the date on which the court sanction hearing is originally proposed to be held or, if for any reason the court sanction hearing is rearranged for a later date, not earlier than one week prior to that later date.

#### NOTE ON SECTION 9

##### **Rule 11.1**

*The obligation to make cash available under Rule 11.1 will be considered to have been met if, at the time the acquisition was made, shareholders were able to elect for cash consideration at a price per share not less than that required by Rule 11.1, even if such an election subsequently ceases to be available.*

### 10 SETTLEMENT OF CONSIDERATION

Except with the consent of the Panel, the consideration must be sent to offeree company shareholders within 14 days of the effective date. The terms of the scheme must reflect this requirement.

### 11 RETURN OF DOCUMENTS OF TITLE

If an offer being implemented by way of a scheme lapses or is withdrawn, or if a shareholder withdraws his election for a particular form of consideration, all documents of title and other documents lodged with any form of election must be returned as soon as practicable (and in any event within 14 days of such lapsing or withdrawal) and the receiving agent should immediately give instructions for the release of securities held in escrow.

**APPENDIX 7 CONTINUED****12 VOTING BY CONNECTED EXEMPT PRINCIPAL TRADERS**

Except with the consent of the Panel, securities owned by an exempt principal trader connected with an offeror or the offeree company must not be voted on a resolution put to shareholders in the offeree company to approve or to give effect to a scheme of arrangement. The Panel will normally grant its consent in the following circumstances:

- (a) an exempt principal trader connected with an offeror whose offer is being implemented by way of a scheme will normally be permitted to vote against the scheme but will not normally be permitted to vote in favour of it;
- (b) an exempt principal trader connected with a competing offeror (or potential offeror) will normally be permitted to vote in favour of such a scheme but will not normally be permitted to vote against it; and
- (c) an exempt principal trader connected with the offeree company will normally be permitted to vote in favour of or against the scheme.

**13 SCHEMES WHICH DO NOT HAVE THE SUPPORT OF THE OFFEREE BOARD**

The Panel should be consulted if an offeror is considering announcing an offer or possible offer which it is proposed will be implemented by means of a scheme of arrangement without, prior to such announcement, obtaining the support of the offeree board.

**14 INCORPORATION OF OBLIGATIONS AND RIGHTS**

In addition to the relevant requirements of Rules 24 and 25, the scheme circular must incorporate language which appropriately reflects those parts of Rule 13.5(a) and 13.6 (if applicable) and of this Appendix 7 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of offeree companies.

**15 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS**

Where securities are offered as consideration and it is intended that they should be admitted to listing on the Official List and/or to trading on a recognised investment exchange, the relevant admission to listing and/or trading condition should, except with the consent of the Panel, be in terms which ensure that it is capable of being satisfied only when all steps required for the admission to listing or trading have been completed other than the UKLA and/or the relevant recognised investment exchange, as applicable,

### **APPENDIX 7 CONTINUED**

having announced their respective decisions to admit the securities to listing or trading. Where securities are offered as consideration and it is intended that they should be admitted to listing or to trading on any other investment exchange or market, the Panel should be consulted.

#### **16 PROVISIONS DISAPPLIED IN A SCHEME**

The following provisions of the Code do not apply to a scheme of arrangement:

- (a) Rule 4.5 (restriction on the offeree company accepting an offer in respect of treasury shares);
- (b) Rule 10 (the acceptance condition);
- (c) Note 3 on Rule 11.1 (when the obligation to offer cash is satisfied);
- (d) the Note on Rule 12.1 (the effect of lapsing);
- (e) Note 2 on Rule 13.6 (availability of withdrawal rights);
- (f) Rules 17.1 and 17.2 (announcement of acceptance levels);
- (g) Rule 18 (the use of proxies and other authorities in relation to acceptances);
- (h) Rule 24.7 (incorporation of obligations and rights) and Rule 24.14 (cash underwritten alternatives which may be shut off);
- (i) Rule 24.10 (admission to listing and admission to trading conditions);
- (j) Rules 31.1 to 31.10 (timing of the offer);
- (k) Rule 32.1(c), Notes 3 (first sentence) and 4 on Rule 32.1, paragraph (b) of Note 3 on Rule 32.2 and Note 4 on Rule 32.2 (revision);
- (l) Rules 33.1 to 33.3 (alternative offers); and
- (m) Rule 34 (right of withdrawal).

**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.**

## **App 8.2**

### **APPENDIX 8 CONTINUED**

(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

**APPENDIX 8 CONTINUED**

- (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.

## **App 8.4**

### **APPENDIX 8 CONTINUED**

(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.

## DOCUMENT CHARGES

Charges are payable on offer documents as set out in this Section.

The document charges are subject to periodic review; until further notice they are payable on all offers valued at £1 million or more. The amount of the charge will depend upon the value of the offer according to the scale set out below.

### 1 SCALE OF DOCUMENT CHARGES

Value of the offer £ million	Charge £	Charge as a maximum % of the value of the offer %
1 to 5	2,000	0.20
Over 5 to 10	8,500	0.17
Over 10 to 25	14,000	0.14
Over 25 to 50	27,500	0.11
Over 50 to 100	50,000	0.10
Over 100 to 250	75,000	0.08
Over 250 to 500	100,000	0.04
Over 500 to 1,000	125,000	0.03
Over 1,000	175,000	0.02

### 2 VALUATION OF OFFER FOR DOCUMENT CHARGES

When the charge falls to be calculated on the basis of the value of securities to be issued as consideration, it should be computed by reference to the middle market quotation of the relevant securities at the last practicable date before the publication of the offer document as stated in that document and/or, as the case may be, by reference to the estimate of the value of any unlisted securities consideration given in the document in accordance with Rule 24.11.

When there are alternative offers, the alternative with the highest value will be used to calculate the value of the offer. Offers for all classes of equity share capital and other transferable securities carrying voting rights will be included in the calculation of the value of the offer, but offers for non-voting, non-equity share capital, convertibles, options etc. will not.

### 3 “WHITEWASH” DOCUMENTS

A document charge is payable on all whitewash documents when, if a mandatory offer would be necessary but for the whitewash, its value would be £1 million or more. The Panel should be consulted in cases of whitewashes involving underwriting commitments or the issue of convertible securities.

## **Doc 2**

### **DOCUMENT CHARGES CONTINUED**

The scale of charges is set out below:

Value of the offer £ million	Charge £
1 to 5	2,500
Over 5 to 10	5,000
Over 10	10,000

#### **4 MERGERS**

When a merger is effected by offers for both companies by a new company created to make the offers, the document charge will be determined by the value of the lower of the two offers.

#### **5 TENDER OFFERS**

The document charge does not apply to tender offers under Appendix 5.

#### **6 PAYMENT OF DOCUMENT CHARGES**

The financial adviser to the offeror (or, if there is no financial adviser, the offeror) is responsible for the payment of the document charge to the Panel except in the case of a whitewash document when the financial adviser to the offeree company is responsible. Payments should be sent to the Panel when documents are published.

In all cases, a note setting out the calculation of whether a document charge is payable or not and, if payable, showing the calculations relating to each form of the offer should accompany the offer document (and payment where applicable) sent to the Panel. If the offer is revised, a similar note should be sent to the Panel with the revised offer document and any necessary further payment.

#### **7 VAT AND OTHER TAX**

The Customs and Excise authorities have confirmed that, under the arrangements which currently apply, the activities of the Panel are outside the scope of Value Added Tax. Document charges are therefore not liable to VAT and these payments will be treated as disbursements for VAT purposes.

The Panel is advised that the tax treatment of the document charge should follow that of the costs of the offer.

# PRACTICE STATEMENTS

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## **PRACTICE STATEMENT NO 1**

### **RULE 20.1 – EQUALITY OF INFORMATION TO SHAREHOLDERS AND THE POLICING OF MEETINGS**

Rule 20.1 provides that information about parties to an offer must be made equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner. This Rule is derived from General Principle 1, which is a fundamental principle of the Takeover Code in providing protection to shareholders in the offeree company.

Note 3 on Rule 20.1 permits representatives of the offeror or offeree company, or their respective advisers, to hold meetings with shareholders of, or other persons interested in the securities of, either the offeror or the offeree company, or with analysts, brokers or others engaged in investment management or advice, both prior to and during the offer period, provided that no material new information is forthcoming and no significant new opinions are expressed. In order to ensure that this is the case, except with the consent of the Panel, an appropriate representative of the financial adviser or corporate broker to the offeror or the offeree company is required to attend the meeting and to confirm in writing to the Panel that these requirements have been met.

The Panel Executive wishes to make the following points regarding the application of Rule 20.1.

1. The requirements set out in Note 3 on Rule 20.1 apply to all types of meetings, both formal and informal, other than meetings by chance.
2. Financial advisers and corporate brokers policing meetings are reminded that they are required to provide the Executive with the written confirmation referred to in Note 3 on Rule 20.1 by no later than 12 noon on the business day following the meeting. Timely provision of the written confirmation is essential in order for the Executive to be satisfied that shareholders have had access to the same information in making decisions as to offer acceptance, voting and dealing in relevant securities during the offer period.
3. The letter of confirmation should be signed personally by an appropriate representative of the financial adviser or corporate broker who attended the meeting. Signature by a colleague on behalf of the financial adviser or corporate broker who attended the meeting is not acceptable.
4. Note 3 on Rule 20.1 draws a distinction between meetings held prior to the offer period and meetings held during the offer period. In the event that material new information has been forthcoming or significant

**PRACTICE STATEMENT NO 1 CONTINUED**

new opinions have been expressed in meetings held prior to the offer period, the financial adviser or corporate broker will be required to confirm to the Executive that the information and/or opinions will be included in the announcement to be made under Rule 2.7. If and when such an announcement is made, advisers should take care to ensure that the relevant information and/or opinions are incorporated in the announcement.

5. In the case of meetings held during the offer period, in the event that material new information has been forthcoming or significant new opinions have been expressed, an announcement giving details of such information or opinions will be required to be made as soon as possible thereafter. In addition, the Executive may require a document to be sent to shareholders and persons with information rights and made readily available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s). However, the Executive may agree to a meeting being held during the offer period provided that, instead of an immediate announcement being made, written confirmation is given to the Executive that the information and/or opinions will be included in the announcement to be made under Rule 2.7.
6. It is common practice for meetings to be held prior to the commencement of an offer period or prior to the publication of an announcement under Rule 2.7, for example, to gather irrevocable commitments, to ascertain the views of selected major shareholders or to procure financing commitments. In such cases, it is also common practice for the persons present at such meetings to be provided with written presentations. Advisers should take care to ensure that any material information or significant opinions contained in such presentations (or otherwise disclosed at such meetings) are confined to information and opinions which have already been made public. Where information or opinions are included in presentations, the Executive is likely to regard the information as "material" or the opinions as "significant". Accordingly, any such new information and/or opinions would need to be published in a shareholder circular or included in the announcement to be made under Rule 2.7.
7. The tests as to whether any information or opinion is "new" and whether the information is "material" or the opinion "significant" have to be applied in the context of the circumstances of each case. The application of the tests of materiality and significance, in particular, are not always straightforward and, in cases of doubt, companies or their advisers are advised to consult the Executive.

**PRACTICE STATEMENT NO 1 CONTINUED**

8. The fact that information given during such meetings is based upon information which has previously been made publicly available does not preclude it from being regarded as “new” and therefore falling within Note 3 on Rule 20.1. For example, the provision of financial data or statistics which have been calculated from publicly available data or statistics may fall within the Note, even where the data or statistics have been arrived at following a simple arithmetic process. It is also relevant to consider whether the information which is given is new in the manner in which it has been presented.
9. Rule 20.1 applies equally to significant new opinions of the offeror or the offeree company on an offer as it does to factual information released by or on behalf of either such party, even if such opinions are based on publicly available information. As a result, it is not acceptable for an offeror or offeree company or their respective advisers to make significant arguments in support of or against an offer to selected shareholders, analysts, brokers or fund managers unless these opinions have been disclosed to all shareholders and to the market generally by means of a circular and/or a public announcement.

The Executive should be consulted in case of doubt.

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**12 February 2004**

**Last amended 30 September 2013**

## **PRACTICE STATEMENT NO 2**

### **RULE 20.2 – SITE VISITS AND MEETINGS WITH MANAGEMENT**

Under Rule 20.2 any information given to one offeror or potential offeror must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome. In the absence of such a requirement, a competing, and in the eyes of the offeree company board perhaps less welcome, offeror might be dissuaded from bidding and the shareholders of the offeree company might therefore be deprived of the opportunity to consider another, potentially more favourable, offer.

In the view of the Executive, Rule 20.2 extends to site visits and meetings with offeree company management in addition to information disclosed by other means. Accordingly, if one offeror or potential offeror has been afforded a site visit or granted access to management with a view to discussing the offeree company's business, an equivalent site visit or meeting with management must be granted to another offeror or bona fide potential offeror if it so requests.

The Executive recognises that it may not be possible to replicate exactly the same site visit or management access for a subsequent offeror as was given to the first offeror, but considers that the offeree company and its financial adviser are responsible for ensuring, as far as practicable, that the subsequent offeror is afforded equivalent access and equality of treatment. In the case of a meeting, and consistent with Note 1 on Rule 20.2, offeree company management would not be required to provide specific items of information to the subsequent offeror at that meeting unless the specific information requested had previously been provided to another offeror or potential offeror. Should there be any dispute as to whether the provisions of Rule 20.2 have been complied with, the relevant financial adviser will be expected to satisfy the Panel that they have been.

The Executive should be consulted in cases of doubt.

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**12 February 2004**

## **PRACTICE STATEMENT NO 3**

### **RULE 20.2 – CONTROLLED AUCTIONS**

Under Rule 20.2 any information given to one offeror or potential offeror must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome. Note 2 on Rule 20.2 goes on to limit the conditions that an offeree company can attach to the passing of information pursuant to the Rule since the imposition of onerous conditions might dissuade a subsequent offeror from bidding and the shareholders of the offeree company might therefore be deprived of the opportunity to consider another, potentially more favourable, offer.

Note 2 only applies in respect of the passing of information requested by an offeror or potential offeror where that information has already been provided to an earlier offeror or potential offeror. It does not address the position of the first offeror to which information is provided, and the Code does not seek to intervene in relation to the conditions that an offeree company might seek to impose on the first offeror or potential offeror because Rule 20.2 does not apply at that stage.

On occasion, an offeree company might want to approach a number of potential offerors asking them to participate in a controlled auction process to acquire the company. In such a case, each of the potential offerors receiving information as part of the auction process will be considered to be a “first offeror” for the purposes of Note 2 on Rule 20.2, provided that each of them agrees to the conditions on which it will receive the information before that information is passed to any of them. Note 2 does not, therefore, seek to limit the conditions that the offeree company can attach to the passing of information to those potential offerors and the offeree company can agree different conditions with each of the potential offerors concerned.

This will not, however, affect the position of any subsequent offeror who was not approached by the offeree company to participate in the auction or of any potential offeror who was initially approached but who refused to agree to the conditions the offeree company was seeking to impose before information was passed to other potential offerors. Such persons will continue to benefit from the protections in Rule 20.2 and Note 2.

The Executive should be consulted in cases of doubt.

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**PRACTICE STATEMENT NO 3 CONTINUED**

*Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk).*

**12 February 2004**

## **PRACTICE STATEMENT NO 5**

### **RULE 13.5(a) – INVOCATION OF CONDITIONS**

It is standard market practice in the UK for offers (other than mandatory offers, where the provisions of Rule 9 of the Takeover Code apply) to be stated as being conditional upon the satisfaction, or waiver, of a number of conditions. In a typical offer, the conditions can be broken down into four broad categories as follows:

- the acceptance condition – i.e. the minimum level of shareholder acceptance of the offer below which the offeror may decline to proceed with the offer;
- UK or European Commission competition clearances;
- other, effectively mandatory, conditions designed to give effect to some supervening regulatory requirement – for example, a listing condition on a securities exchange offer; and
- other conditions included for the benefit of the offeror in order to give it the right not to proceed with the offer in the circumstances stipulated. There is a wide range of conditions which fall within this category, although one of those frequently encountered is the “material adverse change” (or “MAC”) condition, whereby the offeror can lapse its offer in the event of a material adverse change in the business or prospects of the offeree company in the period after announcement of the offer.

The principal provision of the Code applicable to conditions is Rule 13. Rule 13.1 provides that offer conditions must not normally be in subjective terms. In addition, Rule 13.5(a) provides that, except for the acceptance condition:

**“An offeror should not invoke any condition ... so as to cause the offer not to proceed, to lapse or to be withdrawn unless the circumstances which give rise to the right to invoke the condition ... are of material significance to the offeror in the context of the offer.”**

Rule 13.2 provides further that neither a UK nor a European Commission competition condition will be subject to either Rule 13.1 or Rule 13.5(a).

The purpose of Rule 13.5(a) is to establish an overriding standard of materiality that must be satisfied before an offeror can rely on a condition for its benefit. The meaning of then Note 2 on Rule 13 (which is now Rule 13.5(a)) was considered by the Panel on appeal during the offer for Tempus Group plc by WPP Group plc, as reported in Panel Statement 2001/15. In that case, the condition in question which the offeror sought to rely on was

**PRACTICE STATEMENT NO 5 CONTINUED**

a MAC condition. The Panel concluded that the necessary test of “material significance” was not met and in its decision stated that:

“... meeting this test requires an adverse change of very considerable significance striking at the heart of the purpose of the transaction in question, analogous ... to something that would justify frustration of a legal contract.”.

The Executive is aware that certain practitioners interpreted Panel Statement 2001/15 to mean that an offeror would need to demonstrate legal frustration in order to be able to invoke a condition to its offer (other than the acceptance condition or any UK or European Commission competition condition). The Executive does not consider this interpretation to be correct.

In applying Rule 13.5(a) in the light of the Panel’s decision set out in Panel Statement 2001/15, the Panel Executive’s practice is as follows:

- as set out in Rule 13.5(a), the appropriate test for the invocation of a condition is whether the relevant circumstances upon which the offeror is seeking to rely are of material significance to it in the context of the offer – which must be judged by reference to the facts of each case at the time the relevant circumstances arise;
- in the case of a MAC, or similar, condition, whether the above test is satisfied will depend on the offeror demonstrating that the relevant circumstances are of very considerable significance striking at the heart of the purpose of the transaction; and
- whilst the standard required to invoke such a condition is therefore a high one, the test does not require the offeror to demonstrate frustration in the legal sense.

In accordance with RS 2004/4, in considering whether a particular matter should give rise to the right to invoke a condition, it is the Executive’s practice to take into account all relevant factors, including whether:

- the condition was the subject of negotiation with the offeree company;
- the condition was expressly drawn to offeree company shareholders’ attention in the offer document or announcement, with a clear explanation of the circumstances which might give rise to the right to invoke it; and
- the condition was included to take account of the particular circumstances of the offeree company.

**PRACTICE STATEMENT NO 5 CONTINUED**

This Practice Statement applies in the same way to the invocation of pre-conditions permitted under Rule 13.4.

The Executive should be consulted in cases of doubt.

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**28 April 2004**

**Last amended 19 September 2011**

## **PRACTICE STATEMENT NO 6**

### **STRATEGIC REVIEW ANNOUNCEMENTS**

From time to time, a company may announce that it is conducting a strategic review of its business (a “strategic review announcement”); in some cases, the announcement will go on to identify an offer for the company as one of the possible outcomes of the strategic review. The Panel Executive is aware that, whilst the ultimate conclusion of a strategic review might be an offer for the company, an offer may be only one of a number of options being explored by the company. The Executive is also mindful that such reviews may take place over a protracted period of time.

The Executive’s practice in relation to strategic review announcements and Rule 2 is as follows:

**(i) Strategic review announcement which refers to an offer:**

If the strategic review announcement refers specifically to an offer (or a merger or the search for a buyer for the company) as one of the options to be considered as part of the strategic review, the Executive will normally treat the announcement as starting an offer period in relation to the company. This is in accordance with the definition of “offer period”, which states that an offer period will commence “when the first announcement is made of an offer or possible offer for a company, or when certain other announcements are made, such as an announcement ... that the board of the company is seeking potential offerors”.

Any potential offeror with which the company is in talks, or from which it has received an approach with regard to a possible offer, at the time at which the strategic review announcement is made will be required to be identified in accordance with Rule 2.4(a) and the date on which the deadline set in accordance with Rule 2.6(a) will expire must be specified in accordance with Rule 2.4(c).

If the conclusion of the strategic review is not to pursue an offer, the company will be required to update the position by way of a public announcement.

**(ii) Strategic review announcement which does not refer to an offer:**

If the strategic review announcement does not refer to an offer (or a merger or the search for a buyer for the company), the Executive will not treat the announcement as automatically starting an offer period.

In such circumstances, the Executive will make enquiries of the company’s advisers as to the options being considered by the board. The Executive will normally require the company to make a further

**PRACTICE STATEMENT NO 6 CONTINUED**

announcement, identifying that an offer is one of the options to be considered as part of the strategic review, where both:

- (a) an offer is being, or will be, actively considered (as opposed to being, as it almost inevitably will be, one of many possibilities); and
- (b) there is rumour and speculation about a possible offer for the company or an untoward movement in its share price.

Any such further announcement will commence an offer period and any potential offeror with which the company is in talks, or from which it has received an approach with regard to a possible offer, at the time at which the announcement is made will be required to be identified in accordance with Rule 2.4(a) and the date on which the deadline set in accordance with Rule 2.6(a) will expire must be specified in accordance with Rule 2.4(c). If the conclusion of the strategic review is not to pursue an offer, the company will be required to update the position by way of a public announcement.

Companies and their advisers are encouraged to consult the Executive before making a strategic review announcement or any statement that confirms that the strategic review is continuing.

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**21 July 2004**

**Amended 19 September 2011**

## **PRACTICE STATEMENT NO 10**

### **CASH OFFERS FINANCED BY THE ISSUE OF OFFEROR SECURITIES**

Under Rule 2.7(a) of the Takeover Code, an offeror should announce a firm intention to make an offer only when it has every reason to believe that it can and will continue to be able to implement the offer. Under Rules 2.7(d) and 24.8, when an offer is made in cash or includes an element of cash, the offer document must include confirmation by an appropriate third party (usually the offeror's financial adviser) that resources are available to the offeror sufficient to satisfy full acceptance of the offer (a "cash confirmation").

From time to time, the Panel Executive is consulted, in the context of these provisions, about:

- the conditions to which a cash offer, or an offer which includes an element of cash, may be subject when it is to be financed, or partially financed, by the issue of offeror securities; and
- the form of the cash confirmation required in such circumstances, and whether the cash confirmation can be expressed as being conditional on the success of the issue of the offeror's securities.

#### **Conditions**

Rule 13.4 provides that, where an offeror proposes to finance a cash offer (or a cash alternative to a securities exchange offer) by an issue of new securities, the offer must be made subject to any condition required, as a matter of law or regulatory requirement, in order validly to issue such securities or to have them listed or admitted to trading. Conditions which will normally be considered to be necessary for such purposes include:

- the passing of any resolution necessary to create or allot the new securities and/or to allot the new securities on a non-pre-emptive basis (if relevant); and
- where the new securities are to be admitted to listing or to trading on any investment exchange or market, any necessary listing or admission to trading condition.

It will not, however, be appropriate for the offer to be conditional upon any placing, underwriting or underpinning agreement in relation to the issue of the new securities becoming unconditional and/or not being terminated. A condition of this nature is not necessary as a matter of law or regulatory requirement in order to issue the new securities or, therefore, to implement the offer.

**PRACTICE STATEMENT NO 10 CONTINUED****Cash confirmation**

In order to satisfy Rules 2.7(a), 2.7(d) and 24.8, it is the responsibility of the party giving the cash confirmation and the offeror (and, if it is not the cash confirmer, the offeror's financial adviser) to take all reasonable steps, before announcement of the offer, to satisfy themselves that the issue of the new securities will be successful, and that the offeror will have the necessary cash available to finance full acceptance of the offer.

If an offer, which was to be financed by the issue of offeror securities, lapses or is withdrawn owing to a failure to fulfil a condition relating to the issue, the Executive will wish to be satisfied that Rule 2.7(a) was complied with (so that, on announcement, the offeror and its financial adviser had every reason to believe that the offer could and would be implemented) and also that Rule 13.5(b) had been complied with (i.e. that the offeror had used all reasonable efforts to ensure the satisfaction of the condition).

The Executive should be consulted at the earliest opportunity in cases of doubt on either issue.

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**25 April 2005****Last amended 19 September 2011**

## **PRACTICE STATEMENT NO 11**

### **WORKING CAPITAL REQUIREMENTS IN CASH AND SECURITIES EXCHANGE OFFERS**

From time to time, the Panel Executive is consulted by potential offerors about the acceptability of offer conditions relating to the working capital requirements of the enlarged offeror group after the completion of the offer. “Working capital” in this context means any third party debt of the enlarged offeror group that is required for reasons other than satisfying the cash consideration due under the offer.

The Executive’s practice in this area is as follows:

- an offeror will not, other than in exceptional circumstances (such as those described in Rule 13.4(c) of the Takeover Code in relation to financing pre-conditions), be permitted to include a specific condition to its offer relating to the offeree company’s, or the enlarged offeror group’s, working capital position or the availability of working capital facilities upon completion of the offer;
- if working capital concerns arise after announcement of the offer, the offeror will be able to allow its offer to lapse only if it is able to invoke one of the conditions to the offer in accordance with the usual application of Rule 13.5(a); and
- in the event that an offer lapses as a result of working capital concerns, the Executive will wish to be satisfied that the offeror and its financial adviser had, at the time of announcement of the offer, complied with Rule 2.7(a) and, following the announcement of the offer, complied with the obligation under Rule 13.5(b) to use all reasonable efforts to ensure the satisfaction of any conditions to which the offer was subject.

An offeror and its financial adviser need not, however, ensure that any working capital financing of the enlarged offeror group is obtained on a “certain funds” basis as contemplated by Rule 24.8.

The Executive should be consulted in cases of doubt.

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**25 April 2005**

**Last amended 19 September 2011**

## **PRACTICE STATEMENT NO 12**

### **RULE 9 AND THE INTERESTS IN SHARES OF CLIENTS WHOSE FUNDS ARE MANAGED ON A DISCRETIONARY BASIS**

The definition of “acting in concert” in the Code provides, inter alia, that:

“... the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:

...

(4) a fund manager (including an exempt fund manager) with any investment company, unit trust or other person whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;”.

The Executive wishes to make clear that it interprets this presumption to mean that funds managed on a discretionary basis by a fund management organisation will be treated for the purposes of the Code as controlled by the fund management organisation and not by the person(s) on whose behalf the funds are managed. Therefore, the fund management organisation, and not its clients, will be treated as interested in any shares and other interests in shares managed by the fund management organisation on a discretionary basis. As a result, the Executive will aggregate shares which the fund management organisation manages on behalf of its clients on a discretionary basis with shares and interests in shares in which the fund management organisation and other persons under the same control as it are interested for their own account in assessing whether, for example, an obligation to make a mandatory offer under Rule 9.1 of the Code has been triggered.

In the light of the above, and in view also of Note 16 on Rule 9.1, where a fund management organisation launches an investment trust or investment company and wishes to subscribe for shares in the company as principal or on behalf of its discretionary clients, or if it may subscribe for shares pursuant to underwriting arrangements, it should have regard to the Code and, in particular, to the following points:

- (a) Rule 9.1 will be relevant if the aggregate number of shares in which all persons under the same control as the fund management organisation are interested (including any interests in shares arising as a result of the application of presumption (4)) carry 30% or more of the voting rights of the company. The Executive considers that it would be good practice for the aggregate percentage interest to be disclosed prominently in the prospectus or other public offering documentation making clear:

**PRACTICE STATEMENT NO 12 CONTINUED**

- (i) if the aggregate number of shares in which the fund management organisation and all persons under the same control as it are interested (including any interests in shares arising as a result of the application of presumption (4)) carry 30% or more of the voting rights of the company, but such persons do not together hold shares carrying 50% of the voting rights of the company, that any acquisitions of additional interests in shares carrying voting rights will trigger an obligation to make a mandatory offer under Rule 9.1; and
  - (ii) if the aggregate number of shares carrying voting rights held by the fund management organisation and all persons under the same control as it (including any shares treated as being held by the fund management organisation as a result of the application of presumption (4)) represents more than 50% of the voting rights of the company, that the fund management organisation and persons under the same control as it will normally be able to acquire further interests in shares of the company carrying voting rights without incurring an obligation to make a mandatory offer under Rule 9.1;
- (b) if the number of shares to be issued to the fund management organisation may vary depending on, for example, investor demand, the maximum aggregate percentage interest should be disclosed in the prospectus or public offering documentation;
  - (c) if (i) the fund management organisation and persons under the same control as it include a principal trader, and (ii) the aggregate number of shares in the company in which they are interested approaches or exceeds 30% of the voting rights, the principal trader may, with the Panel's prior consent, continue to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period 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; and
  - (d) if the fund management organisation or any persons under the same control as it hold options, warrants or other rights to subscribe for shares carrying voting rights in the company, or securities convertible into such shares, which on exercise or conversion (as appropriate) would otherwise result in a mandatory offer obligation being triggered, no such obligation will normally arise provided that the terms are fully disclosed in the prospectus or other public offering documentation (the text of the proposed disclosure having been cleared with the Executive before publication).

**PRACTICE STATEMENT NO 12 CONTINUED**

The Executive should be consulted in cases of doubt.

*Practice Statements are issued by the Panel Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Takeover Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk).*

**4 August 2005**

**Last amended 1 January 2015**

## **PRACTICE STATEMENT NO 18**

### **CROSS-BORDER MERGERS**

On 15 December 2007, the Companies (Cross-Border Mergers) Regulations 2007 (the “Regulations”) came into force. The Regulations implement Directive 2005/56/EC on cross-border mergers of limited liability companies. This Practice Statement considers the application of the Takeover Code to transactions to be effected pursuant to the Regulations.

#### **The Regulations**

The Regulations introduced a new type of statutory merger, a “Cross-Border Merger”, which must involve at least one company within the meaning of section 1 of the Companies Act 2006 and at least one company governed by the law of an EEA State other than the United Kingdom. In a Cross-Border Merger, all the assets and liabilities of one or more “transferor companies” are transferred by way of the transaction to a “transferee company”.

Under the Regulations, a Cross-Border Merger may take one of three forms, as follows:

- (a) a “merger by absorption”, in which a transferor company transfers all its assets and liabilities to an existing transferee company in exchange for securities in the transferee company (or securities and cash) receivable by the members of the transferor company;
- (b) a “merger by formation of a new company”, in which two or more transferor companies transfer all their assets and liabilities to a transferee company formed for the purposes of the Cross-Border Merger in exchange for securities in the transferee company (or securities and cash) receivable by the members of the transferor companies; or
- (c) a “merger by absorption of a wholly-owned subsidiary”, in which a transferor company which is a wholly-owned subsidiary transfers all its assets and liabilities to its parent company.

#### **The Introduction to the Code**

Section 3 of the Introduction to the Takeover Code describes the companies, transactions and persons that are subject to the Code. The first sentence of section 3(b) of the Introduction states as follows:

“... [T]he Code is concerned with regulating takeover bids and merger transactions of the relevant companies, however effected, including by means of a statutory merger or scheme of arrangement ...”.

**PRACTICE STATEMENT NO 18 CONTINUED**

The Panel Executive considers that certain Cross-Border Merger transactions will be subject to the Code, as described below.

**Mergers by way of absorption**

The Executive will regard a Cross-Border Merger effected by means of a “merger by way of absorption” to be subject to the Code if the transferor company (or one or more of the transferor companies) is a company to which the Code applies by virtue of paragraphs (a)(i) or (ii) of section 3 of the Introduction to the Code (a “Code Company”). Any such transferor company will be treated as an “offeree company” for the purposes of the Code and the transferee company will be treated as the “offeror”.

The Executive will not regard a “merger by way of absorption” to be subject to the Code where the transferee company is a Code Company but the transferor company is not a Code Company (or, where there is more than one transferor company, none of the transferor companies are Code Companies). This will be the case even in a transaction where the size of one or more of the transferor companies is greater than that of the transferee company, and even if the transferee company (i.e. the Code Company) will, upon completion of the transaction, increase its issued share capital by more than 100%. (However, a Rule 9 “whitewash” may be required if, for example, as a result of a “merger by way of absorption”, a person, together with persons acting in concert with him, will come to be interested in shares in a transferee company to which the Code applies carrying 30% or more of the voting rights – see Note 1 of the Notes on Dispensations from Rule 9.)

**Mergers by formation of a new company**

The Executive will normally regard a Cross-Border Merger effected by means of a “merger by formation of a new company” to be subject to the Code if one or more of the transferor companies is a Code Company. Any such transferor company will be treated as an “offeree company” for the purposes of the Code and the transferee company will be treated as the “offeror”.

However, even in such circumstances, if it can be established to the satisfaction of the Executive that the substance of the transaction is the acquisition by the Code Company of the company which is not a Code Company, the Executive may agree that the transaction should not be treated as an offer subject to the Code. This is consistent with the position described in paragraph 5.5.4 of PCP 11 dated 26 April 2002.

**Mergers by absorption of a wholly-owned subsidiary**

Consistent with its current practice in relation to companies which are technically companies to which the Code applies but which have only one

**PRACTICE STATEMENT NO 18 CONTINUED**

shareholder, the Executive does not consider that the Code should be applied to a Cross-Border Merger effected by means of a “merger by absorption of a wholly-owned subsidiary”, even if the transferor company is technically a company to which the Code applies.

The Executive should be consulted at an early stage whenever parties are considering a Cross-Border Merger which may be subject to the Code.

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**24 October 2007**

**Amended 19 September 2011**

## **PRACTICE STATEMENT NO 19**

### **RULE 19.3 – UNACCEPTABLE STATEMENTS**

Rule 19.3 of the Takeover Code states as follows:

**“Parties to an offer and their advisers must take care not to make statements which, while not factually inaccurate, may be misleading or may create uncertainty. In particular, an offeror must not make a statement to the effect that it may improve its offer, or that it may make a change to the structure, conditionality or the non-financial terms of its offer, without committing itself to doing so and specifying the improvement or change. In the case of any doubt as to the application of this Rule to a proposed statement, parties to an offer and their advisers should consult the Panel.”.**

Parties to an offer and their advisers should be aware that, during the course of an offer, and especially in a competitive or hostile situation, any suggestion of the possibility of an improvement to an offer or of any change to the structure, conditionality or non-financial terms of an offer (including, for example, a switch from a scheme of arrangement to a contractual offer) will be of particular sensitivity, since it could lead to a false market being created in the securities of the offeree company.

If, however, an offeror wishes to make a holding statement in order to publicise its initial reaction to a particular development, such as an increase in a competing offeror’s offer, it may state, for example, that it is “considering its position” or that it is “considering its options”. It should not, however, use language which implies that it might improve or change the terms, structure or conditionality of its offer.

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**14 January 2008**

**Amended 19 September 2011**

## **PRACTICE STATEMENT NO 20**

### **RULE 2 – SECRECY, POSSIBLE OFFER ANNOUNCEMENTS AND PRE-ANNOUNCEMENT RESPONSIBILITIES**

#### **1. Introduction**

- 1.1 This Practice Statement describes the way in which the Panel Executive normally interprets and applies certain provisions of Rule 2 of the Takeover Code that relate to the need for secrecy before, and the timing and contents of, possible offer announcements, including the steps which the Executive expects the parties to a possible offer and their advisers to take in order to ensure that their responsibilities in relation to those provisions are complied with. Those provisions of Rule 2 have particular relevance to the Code's objective of promoting the integrity of the financial markets and, in applying those provisions, the Executive's overriding objective is to prevent false markets by ensuring the timely release of announcements relating to a possible offer for a company.
- 1.2 Consultation with the Executive is of crucial importance in the application of the Code and the importance of the requirement to consult the Executive in relation to the application of Rule 2 cannot be over-emphasised. As a practical matter, if the reason for consulting the Executive relates to whether an announcement is required in particular circumstances, the person concerned should explain that the call is urgent so that it can be dealt with by the Executive as a matter of priority.
- 1.3 It is common for a potential offeror, or a company in receipt of an approach, to notify its financial adviser or corporate broker of the possible offer or approach at an early stage. The Executive encourages this practice since such advisers will normally have better systems and more resources than their clients to fulfil the task of monitoring compliance with Rule 2. As explained in paragraph 3(f) of the Introduction to the Code, financial advisers "have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and will comply with them and that the Panel is consulted whenever appropriate". Where a corporate broker alone has been notified of the possible offer or approach, the Executive may regard the corporate broker as fulfilling the role of a financial adviser.
- 1.4 If a potential offeror, or a company which is in receipt of an approach or seeking potential offerors, chooses not to notify its financial adviser, compliance with the provisions of Rule 2 will be its responsibility and it must immediately put in place appropriate procedures to ensure that the requirements of those provisions are observed.

**PRACTICE STATEMENT NO 20 CONTINUED**

1.5 In addition, the Executive notes that section 3(f) of the Introduction to the Code provides that the Code applies to “all advisers in so far as they advise on takeovers or other matters to which the Code applies”. Where no financial adviser has been appointed, the Executive considers that such advisers as have been appointed will have a particular responsibility to emphasise to their client the need for appropriate procedures to be put in place to ensure that the requirements of Rule 2 are observed.

**2. Secrecy**

2.1 Absolute secrecy before an announcement of an offer or possible offer is of vital importance. If secrecy is maintained, it should be possible for offer preparations to be conducted in private, without an announcement of a possible offer being required. Accordingly, all persons who are privy to confidential information concerning an offer or possible offer must conduct themselves so as to minimise the chances of any leak of that information. For example, confidential information should only be passed to another person if it is necessary to do so and if that person is made aware of the need for secrecy.

2.2 In this regard, the Executive notes the Principles of Good Practice for the Handling of Inside Information (the “Principles of Good Practice”) developed by the Financial Services Authority<sup>1</sup>.

2.3 If it appears that there may have been a leak of information, the Executive will, in assessing whether an announcement is required under Rule 2.2, amongst other things, wish to learn immediately from the relevant party or its financial adviser what controls have been put in place in order to keep information secure.

**3. The approach**

3.1 A key issue in applying Rule 2.2(c), Rule 2.2(d) and Rule 2.3 is whether an offeror has made an “approach” to the offeree company regarding a possible offer. This will affect, in particular, whether the responsibility for making an announcement lies with the potential offeror or with the offeree company.

3.2 For these purposes, the Executive interprets the term “approach” broadly. Each case will turn on its own facts, but the Executive normally considers an approach to have been received when a director or representative of, or an adviser to, an offeree company is informed by, or on behalf of, a potential offeror that it is considering the possibility of making an offer

<sup>1</sup> See *Market Watch, Issue No 27, June 2008*

**PRACTICE STATEMENT NO 20 CONTINUED**

for the company. This may be at a very preliminary stage in the offeror's preparations and the manner of the approach may be informal and no more than broadly indicative. For example, there is no requirement for an approach to be made in writing, or for an indicative offer price (or any terms or conditions) to be specified, and it could be made as part of a conversation on unrelated matters.

- 3.3 Rule 2.3(a) provides that the responsibility for making an announcement before the board of the offeree company has been approached will lie with the potential offeror, whereas Rule 2.3(c) provides that the responsibility for making an announcement following an approach will normally rest with the offeree company board. However, if the offeree company board rejects an approach it will not necessarily know whether the potential offeror intends to pursue its interest in the possible offer. Therefore, following an unequivocal rejection of an approach, the Executive's practice is to treat the responsibility for making an announcement as reverting to the potential offeror. Nevertheless, since the potential offeror will have made an initial approach to the board of the offeree company (albeit that the approach was unequivocally rejected), the Executive will apply the criteria in Rule 2.2(c), and not the criteria in Rule 2.2(d), when determining whether an announcement is required following rumour and speculation or an untoward movement in the offeree company's share price.
- 3.4 In order to avoid confusion, the parties should agree which of the potential offeror and the offeree company has responsibility for making an announcement at any particular time following the initial approach. If the parties are unable to reach agreement as to where the responsibility rests, or if there is any doubt as to whether there has been an unequivocal rejection of an approach, the Executive should be consulted.
- 3.5 Rule 2.3(d) provides that a potential offeror must not attempt to prevent the board of an offeree company from making an announcement relating to a possible offer, or publicly identifying the potential offeror, at any time the board considers appropriate. The Executive would consider as being in breach of this provision any attempt by a potential offeror to specify the circumstances in which an offeree company may not publicly identify the potential offeror – for example, a provision to the effect that an approach will be withdrawn automatically in the event that:
- (a) the offeree company does not engage with the potential offeror within a specified period of time;
  - (b) a requirement to make an announcement under Rule 2.2 is triggered; or

**PRACTICE STATEMENT NO 20 CONTINUED**

(c) the offeree company receives an approach from a third party.

If an offeree company receives a letter or other document from a potential offeror which includes such a provision, it should notify the Executive.

**4. When an announcement is required before an approach****(a) Rule 2.2(d)**

4.1 Before a potential offeror which is actively considering an offer has made an approach to the board of the offeree company, the requirement for the potential offeror to make an announcement under Rule 2.2(d) will be triggered if:

(a) the offeree company is the subject of rumour and speculation; or

(b) there is an untoward movement in its share price,

and, in either case, there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation.

**(b) The requirement to consult the Executive**

4.2 The Executive must be consulted by a potential offeror, or its financial adviser, at an appropriate stage in order for it to be able to determine whether an announcement is required under Rule 2.2(d). Consultation will not necessarily lead to a requirement to make an announcement; this will depend on all the relevant circumstances.

**(i) Rumour and speculation**

4.3 Note 1(c) on Rule 2.2 requires that the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time when an offer is first actively considered by a potential offeror. The requirement for consultation is interpreted strictly and the Executive should therefore be consulted by the potential offeror, or its financial adviser, if there is any rumour and speculation relating to a possible offer for the offeree company and regardless of:

(a) whether the rumour and speculation is specific to the possible transaction under consideration – for example, whether or not the potential offeror is named; or

(b) the manner in which, or the medium by which, the rumour and speculation has been disseminated.

**PRACTICE STATEMENT NO 20 CONTINUED**

4.4 Although the Executive may, on occasion, make enquiries of financial advisers in relation to, for example, rumour and speculation relating to their clients, the Code requires that the Executive should be consulted whenever any such rumour and speculation appears. Therefore, financial advisers should in no circumstances rely on their being contacted by the Executive about rumour and speculation relating to their clients.

*(ii) Share price movements*

4.5 Note 1(c) on Rule 2.2 also requires that the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time when an offer is first actively considered by a potential offeror. For these purposes:

- (a) a movement of 10% or more above the lowest share price since that time is regarded as a material movement; and
- (b) a movement may be abrupt even if there has not been a material movement: for example, a price rise of 5% in the course of a single day is normally regarded as being abrupt. When calculating share price movements in the course of a single day, the reference price should normally be taken to be the previous day's closing price, in order to ensure that overnight movements are included in the calculation.

The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

*(iii) When an offer is first actively considered*

4.6 In interpreting the phrase "the time when ... an offer is first actively considered", the Executive recognises that many potential offerors will, as a matter of course, continually assess the performance of potential acquisition targets and may run internal valuation models as part of this assessment. However, the Executive interprets the phrase "first actively considered" as drawing a distinction between, on the one hand, such routine assessment of a company's performance and, on the other, an increase in the intensity of the potential offeror's assessment of the potential acquisition to a level where it is being given more serious consideration.

4.7 The time when an offer is first actively considered will therefore depend on the facts of a particular case. All relevant factors will be taken into account in determining this, including whether, and the extent to which, for example:

**PRACTICE STATEMENT NO 20 CONTINUED**

- (a) the possible offer has been considered by the board, investment committee or senior management of the offeror;
- (b) work is being undertaken by external advisers; and
- (c) external parties, such as potential providers of finance (whether equity or debt), shareholders in the offeror or the offeree company, pension fund trustees, potential management team candidates, significant customers of, or suppliers to, the offeree company or potential purchasers of assets, have been approached.

**(c) *The requirement for an announcement***

- 4.8 The Executive considers that rumour and speculation relating to the offeree company which refers to the potential offeror in the context of the possible transaction under consideration will normally, of itself, give the Executive reasonable grounds for concluding that it is the potential offeror's actions which have led to the situation, and for determining that the requirement to make an announcement has been triggered. The Executive does not consider that it is required to establish whether the rumour and speculation in question can be definitively linked to the potential offeror – for example, by establishing that conversations were held by a representative of the offeror with the journalist concerned. In addition, the Executive's determination will not normally be affected by some inaccuracy in the rumour and speculation (for example, as to the level of any indicative offer price).
- 4.9 Furthermore, if the rumour and speculation relates to a company which is often the subject of rumour and speculation, this will be taken into account by the Executive but will not necessarily mean that an announcement is not required.
- 4.10 Whether a movement in the share price of the offeree company is untoward for the purposes of Rule 2.2(d) is a matter for the Executive to determine. This determination will be made in the light of all relevant facts and not solely by reference to the absolute percentage movement in the share price. As referred to in Note 1(a) on Rule 2.2, facts which may be considered to be relevant in determining whether a price movement is untoward include general market and sector movements, publicly available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred.

**PRACTICE STATEMENT NO 20 CONTINUED****5. When an announcement is required following an approach or where a purchaser or potential offeror is being sought****(a) Rules 2.2(c) and (f)(i)**

5.1 Following an approach by an offeror to the board of the offeree company, the requirement for the offeree company to make an announcement under Rule 2.2(c) will be triggered if:

- (a) the offeree company is the subject of rumour and speculation; or
- (b) there is an untoward movement in its share price.

5.2 Similarly, when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, or when the board of a company is seeking one or more potential offerors, the requirement to make an announcement under Rule 2.2(f)(i) will be triggered if the company is the subject of rumour and speculation or there is an untoward movement in its share price. Where a purchaser is being sought by a potential seller of such an interest, or interests, without the involvement of the board of the company, the responsibility for making an announcement will rest with that seller, in accordance with Rule 2.3(c).

**(b) The requirement to consult the Executive**

5.3 The Executive must be consulted by the offeree company or potential seller of the interest, or its financial adviser, at an appropriate stage in order for it to be able to determine whether an announcement is required under Rule 2.2(c) or Rule 2.2(f)(i). Consultation will not necessarily lead to a requirement to make an announcement; this will depend on all the relevant circumstances.

**(i) Rumour and speculation**

5.4 In the case of Rule 2.2(c), Note 1(b) on Rule 2.2 requires that, unless an immediate announcement is to be made, the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time when the approach has been received. The requirement for consultation is interpreted strictly and the Executive should therefore be consulted by the potential offeree company, or its financial adviser, if there is any rumour and speculation relating to a possible offer for the offeree company, regardless of:

- (a) whether the rumour and speculation is specific to the possible transaction under consideration; or

**PRACTICE STATEMENT NO 20 CONTINUED**

- (b) the manner in which, or the medium by which, the rumour and speculation has been disseminated.
- 5.5 Similarly, in the case of Rule 2.2(f)(i), the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time that one or more purchasers or offerors are first sought.
- 5.6 Although the Executive may, on occasion, make enquiries of financial advisers in relation to, for example, rumour and speculation relating to their clients, the Code requires that the Executive should be consulted whenever any such rumour and speculation appears. Therefore, financial advisers should in no circumstances rely on their being contacted by the Executive about rumour and speculation relating to their clients.

*(ii) Share price movements*

- 5.7 In the case of Rule 2.2(c), Note 1(b) on Rule 2.2 also requires that, unless an immediate announcement is to be made, the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time of the approach. For these purposes:
- (a) a movement of 10% or more above the lowest share price since that time is regarded as a material movement; and
  - (b) a movement may be abrupt even if there has not been a material movement: for example, a price rise of 5% in the course of a single day is normally regarded as being abrupt. When calculating share price movements in the course of a single day, the reference price should normally be taken to be the previous day's closing price, in order to ensure that overnight movements are included in the calculation.

The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

- 5.8 Similarly, in the case of Rule 2.2(f)(i), the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time when one or more purchasers or offerors are first sought.

*(c) The requirement for an announcement*

- 5.9 There is no equivalent in Rule 2.2(c) or Rule 2.2(f)(i) to the requirement in Rule 2.2(d) for there to be reasonable grounds for concluding that it

## **PRACTICE STATEMENT NO 20 CONTINUED**

is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation. Therefore, an announcement might be required under Rule 2.2(c) or Rule 2.2(f)(i) in circumstances where an announcement would not have been required under Rule 2.2(d) (had the offeree company not been approached). The Executive's determination as to whether the requirement to make an announcement has been triggered will not normally be affected by some inaccuracy in the rumour and speculation (for example, as to the level of any indicative offer price).

5.10 Furthermore, if the rumour and speculation relates to a company which is often the subject of rumour and speculation, this will be taken into account by the Executive but will not necessarily mean that an announcement is not required.

5.11 Whether a movement in the share price of the offeree company is untoward for the purposes of Rule 2.2(c) or Rule 2.2(f)(i) is a matter for the Executive to determine. This determination will be made in the light of all relevant facts and not solely by reference to the absolute percentage movement in the share price. As referred to in Note 1(a) on Rule 2.2, facts which may be considered to be relevant in determining whether a price movement is untoward include general market and sector movements, publicly available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred.

5.12 Under Rule 2.4(a), an announcement by an offeree company which commences an offer period must identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected). Where it is proposed that an announcement should not identify a potential offeror on the basis that its approach has been unequivocally rejected, the Executive should be consulted.

### ***(d) Strategic review announcements***

5.13 In the case of a "strategic review announcement", Practice Statement No 6 may also be relevant.

## **6. No announcement required if no truth**

6.1 There is no requirement under Rule 2.2(c) or Rule 2.2(d) for an announcement to be made confirming that there is no truth to rumour and speculation that an offer might be made for a company. However, circumstances may occur where:

**PRACTICE STATEMENT NO 20 CONTINUED**

- (a) the board of a potential offeree company has received an approach from a potential offeror, or where a potential offeror has yet to approach the potential offeree company but is actively considering a possible offer;
  - (b) there is rumour and speculation to this effect and/or an untoward movement in the potential offeree company's share price, such that an announcement would normally be required to be made under Rule 2.2(c) or Rule 2.2(d); and
  - (c) as a result of the rumour and speculation and/or the untoward movement in the share price of the potential offeree company, the potential offeror decides to withdraw its approach and/or to cease considering the possibility of making an offer.
- 6.2 In such circumstances, the Executive should be consulted to enable it to determine whether an announcement should be made in order to prevent the creation of a false market, clarifying that, although at the time of the rumour and speculation the potential offeree company was in receipt of an approach, and/or that the potential offeror was actively considering a possible offer for the company, this is no longer the case.
- 6.3 However, in appropriate circumstances, the Executive may, as described in Note 4 on Rule 2.2, grant a dispensation from the requirement for an announcement to be made where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. In the event of such a dispensation being 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:
- (a) within six months of the dispensation having been granted, do any of the things set out in Rules 2.8(a) to (e); or
  - (b) 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 (b) the Executive will normally consent to the restrictions in paragraph (a) 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 (b) the Executive will normally consent to the restrictions in paragraphs (a) and (b) being set aside only in the circumstances set out in paragraphs (b) to (d) of Note 2 on Rule 2.8.

**PRACTICE STATEMENT NO 20 CONTINUED**

6.4 In addition, where a potential offeror to which a dispensation has been granted under Note 4 on Rule 2.2 has ceased actively to consider making an offer, the Executive may subsequently require an announcement to be made under paragraph (b) of Note 4 on Rule 2.2 where:

- (a) any rumour and speculation continues or is repeated; and/or
- (b) 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.

6.5 Where an announcement is made under paragraph (b) of Note 4 on Rule 2.2 and in that announcement the former potential offeror makes a “no intention to bid” statement, the restrictions in Rule 2.8 will apply for a period of six months from the date of that announcement (and the restrictions in Note 4 on Rule 2.2 will then cease to apply). However, if, in the announcement made under paragraph (b) of Note 4 on Rule 2.2, the former potential offeror or the offeree company confirms only that it was granted a dispensation under Note 4 on Rule 2.2 on the date specified in the announcement, the restrictions set out in Note 4 will continue to apply from that date.

**7. Identification of potential offerors following the commencement of the offer period**

7.1 Once an offer period has commenced, there is no automatic requirement for:

- (a) the offeree company to announce the existence of a new potential offeror from which it subsequently receives an approach, or with which it engages in talks; or
- (b) a new potential offeror which is actively considering making an offer to announce that fact.

7.2 However, in accordance with Note 3 on Rule 2.2, where rumour and speculation specifically identifies a potential offeror which has not previously been identified in any announcement, the Executive will normally require an announcement to be made by the offeree company or the potential offeror (as appropriate), identifying that potential offeror. Parties and their financial advisers should therefore put appropriate procedures in place to ensure that any announcement that is so required can be released promptly (see paragraphs 10.3 and 10.4 below).

**PRACTICE STATEMENT NO 20 CONTINUED**

- 7.3 In addition, under Rule 2.4(b), any announcement by the offeree company during an offer period which refers to the existence of a new potential offeror must identify that potential offeror, except where the announcement is made after an offeror has announced a firm intention to make an offer for the offeree company.
- 7.4 Under Rule 2.6(d), a potential offeror which has announced that it might make an offer in competition with a firm offeror's offer must, by 5.00 pm on the 53rd day following the publication of the first offeror's initial offer document, announce either a firm intention to make an offer or 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). Where the first offeror is proceeding by means of a scheme of arrangement, the Executive will determine the deadline by which the first offeror must clarify its position in accordance with Section 4 of Appendix 7.

**8. Extending negotiations or discussions**

- 8.1 Rule 2.2(e) provides that an announcement is required when negotiations or discussions relating to a possible offer are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers). Similarly, Rule 2.2(f)(ii) provides that an announcement is required when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, or when the board of a company is seeking one or more potential offerors, and, in either case, the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.
- 8.2 As regards Rule 2.2(e), the Executive should be consulted prior to more than a total of six parties being approached about an offer or possible offer including, for example: potential providers of finance (whether equity or debt); shareholders in the offeror or the offeree company; pension fund trustees; potential management team candidates; significant customers of, or suppliers to, the offeree company; or potential purchasers of assets. When so consulted, the Executive will not normally count employee representatives of the offeree company or the offeror towards the six parties approached.
- 8.3 In considering whether to grant its consent to more than six parties being approached, the Executive will need to be satisfied that secrecy will be maintained. Other than as described in paragraph 8.4 below, the Executive is likely to consent to more than six parties being approached only in limited circumstances.

**PRACTICE STATEMENT NO 20 CONTINUED**

- 8.4 Where a party has been approached about the possibility of its providing finance (whether equity or debt) to an offeror and has declined the opportunity to do so, the Executive may be prepared to treat that party as no longer counting towards the six parties approached, provided that the party is not interested in securities of the offeror or the offeree company and does not have any other ongoing interest in the offeree company. A similar approach may be taken in relation to, for example, potential management team candidates or potential purchasers of assets. Where, for example, one department of a multi-service financial organisation has declined an opportunity to provide finance and a separate department is interested in securities of the offeror or the offeree company, the Executive will not normally treat the organisation as counting towards the six parties that may be approached by virtue of its having been approached to provide finance, provided that the department which is interested in securities of the offeror or the offeree company is not aware of the approach to the department invited to provide finance.
- 8.5 Where a consortium bid is in contemplation, the party which makes the first approach to another potential member of the consortium will be treated for these purposes as the potential offeror. That party, as the potential offeror, may therefore approach up to six parties in total, inclusive of other potential consortium members approached (provided that those approached do not themselves contact any third parties).
- 8.6 As regards Rule 2.2(f)(ii), the Executive should be consulted prior to more than one purchaser or potential offeror being sought, as referred to in Note 1(e) on Rule 2.2. This requirement reflects a concern that the risk of leaks may be greater when purchasers for a controlling interest in a company, or potential offerors, are being sought. This is because each party approached may wish to discuss the matter with other parties, thereby quickly increasing the number of parties who would be aware of the possible transaction.

**9. Timing of announcements**

- 9.1 On occasion, it is argued that to require an announcement referring to the possibility of an offer when the offer preparations are at a preliminary stage might, of itself, lead to the creation of a false market in the offeree company's securities. The Executive does not find this argument persuasive. In the Executive's opinion, if it appears that details of the possible offer may have leaked, leading to rumour and speculation or an untoward movement in the offeree company's share price, the overriding requirement is that an announcement should be made immediately and the fact that the offer preparations are at a preliminary stage may be made clear in the announcement.

## **PRACTICE STATEMENT NO 20 CONTINUED**

- 9.2 Once the requirement to make an announcement under Rule 2.2 has been triggered, the Executive expects parties and their financial advisers to do their utmost to ensure that the announcement is made immediately, i.e. within a matter of minutes. In particular, the announcement should not be delayed whilst, for example, minor drafting changes are considered. If there is any doubt as to the precise form of wording to be included in the announcement, a brief announcement should be released forthwith. A further announcement may then be made later, setting out more detailed information on the offer discussions or preparations.
- 9.3 Furthermore, an announcement should not be delayed in order for other information to be included, for example:
- (a) the summary of the provisions of Rule 8 (as required under Rule 2.4(c)(ii));
  - (b) details of the offeree company's and, if appropriate, the offeror's relevant securities in issue (as required under Rule 2.10); or
  - (c) a confirmation that any offer will be, or is likely to be, solely in cash (see Note 1 on Rule 8 and the definition of a "cash offeror").

If, contrary to the guidance in paragraph 10.3 below, the draft announcement does not include this information, and it cannot be included without delay, a separate announcement which includes this information should be released as soon as possible thereafter.

- 9.4 The information required to be announced under Rule 2.10 includes details of each class of relevant security, and not only details in relation to ordinary shares. The Executive should be consulted if there is any doubt as to whether a security is a class of relevant security that should be included in an announcement made under Rule 2.10.

### **10. Pre-announcement responsibilities**

#### ***(a) Particular responsibility of financial advisers for ensuring compliance with Rule 2***

- 10.1 Where a potential offeror, or a company in receipt of an approach, has notified its financial adviser of the possible offer or approach, the Executive considers that, for the reasons set out in paragraph 1.3 above, the financial adviser has a particular responsibility for:
- (a) monitoring for movements in the offeree company's share price and for rumour and speculation; and
  - (b) consulting the Executive,

**PRACTICE STATEMENT NO 20 CONTINUED**

even if these tasks have not explicitly been delegated to it. The Executive considers that financial advisers should be mindful of their responsibilities from an early stage. In particular, the Executive would not regard the signing of an engagement letter, of itself, to be determinative of when an advisory relationship between a financial adviser and its client commences.

- 10.2 It is vital that, at an early stage, a financial adviser clearly explains to its client the requirements of Rule 2 and ensures that the client understands those requirements. In the Executive's opinion, this is unlikely to be achieved satisfactorily through the financial adviser simply providing the client with a standard form memorandum on the provisions of Rule 2 or the Code generally.

***(b) Preparation of announcements and release procedure***

- 10.3 In order that an offeror or offeree company may release an announcement immediately, if required, an appropriate draft announcement should be prepared and approved at an early stage. A financial adviser may wish to obtain its client's approval of a variety of draft announcements to be released depending on the circumstances at the relevant time. All such draft announcements should be complete in all respects, including, for example:

- (a) the identity of any potential offeror(s) (Rule 2.4(a));
- (b) the date by which any deadline set in accordance with Rule 2.6(a) will expire;
- (c) a summary of Rule 8; and
- (d) the information referred to in Rule 2.10.

Financial advisers may also wish to consider the inclusion in the draft announcement, if appropriate, of a confirmation that any offer will be, or is likely to be, solely in cash (see Note 1 on Rule 8 and the definition of a "cash offeror").

- 10.4 In addition, procedures should be put in place to ensure the prompt release of the announcement when required, including an agreement as to who is to be responsible for making the announcement (for example, the financial adviser or the client) and having appropriate arrangements in place to make the announcement (including access to a Regulatory Information Service). The person responsible should be authorised to release the announcement immediately upon this being required by the Panel. If the approval of a particular person, or group of persons, is required before the announcement is released, the nominated persons

**PRACTICE STATEMENT NO 20 CONTINUED**

must be contactable at all times and an appropriate contingency plan should be put in place in the event that the nominated persons are not contactable. The making of an announcement by the potential offeree company should not be delayed by consultation with the potential offeror.

**(c) Monitoring procedures**

10.5 With regard to monitoring movements in the offeree company's share price, the Executive believes that a system is unlikely to be effective unless it:

- (a) is operative at all times during market hours (including, if the offeree company's securities, or depositary receipts relating to those securities, are traded on an overseas exchange, during that overseas exchange's market hours);
- (b) is able to monitor share price movements on a real time basis; and
- (c) incorporates a mechanism which rebases the monitoring system so as to ensure that price rises are compared against the lowest share price since the time when the offer was first actively considered, the approach was received or one or more purchasers or offerors were first sought (as appropriate).

The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

10.6 With regard to monitoring for rumour and speculation, the principal sources of information relating to offers (including newswires and newspapers) and such other sources of information as are reasonable in the context of the transaction (including overseas publications, trade publications and internet bulletin boards) should be monitored for any rumour and speculation about the possibility of an offer for the offeree company.

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**7 March 2008**

**Last amended 1 January 2015**

## **PRACTICE STATEMENT NO 21**

### **RULE 3 – INDEPENDENT ADVICE**

Rule 3.1 provides that the board of the offeree company must obtain competent independent advice on any offer. Rule 3.3, together with Note 1 on the Rule, provides that, in certain circumstances, an adviser will not be regarded by the Panel as an appropriate person to give independent advice. The purpose of this Practice Statement is to explain certain modifications which the Executive has made to its approach in determining whether a proposed Rule 3 adviser to an offeree company (an “adviser”) is independent of an offeror (or potential offeror) and is therefore in a position to give independent advice to the board of the offeree company.

#### **1. Executive’s approach to determining independence**

In determining whether an adviser is independent, the Executive examines the strength of the overall relationship between the offeror and the adviser and its group.

In doing so, to date the Executive has investigated all matters in relation to which the adviser has provided the offeror with advice over the 12 to 24 month period preceding the adviser’s proposed appointment and any matters currently in contemplation. The Executive has not been concerned solely with the provision of corporate finance advice by the adviser to the offeror since other services provided by the adviser’s group (for example, leading a debt syndication) may also involve the provision of advice and therefore be relevant for the purposes of Note 1 on Rule 3.3.

The Executive has also required information in relation to the fee income generated from the overall relationship between the offeror and the adviser and its group including, for example, the total fees generated during the relevant period and their significance to the adviser’s group.

In considering this information, the Executive’s approach has generally been that, if an adviser is providing advice to an offeror in relation to any matter at the same time as the proposed offer, that adviser would not be considered to be independent, irrespective of the size or location of the matter.

In relation to past advice, the Executive has generally concluded that an adviser may be regarded as being independent if the matters in relation to which the adviser has provided the offeror with advice are not material. The Executive has not considered it appropriate to define materiality in this context, but, in reaching its decision, has been prepared to take into account, for example, the size of past transactions and the location in which they were undertaken.

**PRACTICE STATEMENT NO 21 CONTINUED**

As provided in Rule 3.3, the Executive has not considered an adviser which is in the same group as a corporate broker to an offeror to be capable of giving independent advice to the board of an offeree company.

In the context of a non-recommended offer, the Executive has, in certain circumstances, accepted that it may be in the best interests of shareholders for an offeree company to be advised by a particular adviser notwithstanding that it would not normally be regarded by the Executive as being independent from the offeror. This is generally in circumstances where it is not practicable for the board of the offeree company to find a suitable alternative adviser in the limited time available to consider its response to the offer.

**2. Modifications to the Executive's approach**

Given the increasingly global reach of parties to offers and their financial advisers, the possibility that an adviser is currently acting, has in the recent past acted or is seeking to act, in some capacity for an offeror is now significantly greater than was previously the case. The Executive also recognises that it is now common for parties to offers to use multiple financial advisers in a single transaction or different financial advisers in successive transactions.

As a result, the Executive believes that relationships between financial advisers and their clients are, in many cases, now less exclusive than was previously the case and has therefore concluded that it should be more flexible in its approach in determining the independence of an adviser.

First, the Executive will be prepared to accept that some matters, whether current, past or prospective, may not compromise the independence of the adviser. Consequently, the Executive may conclude that an adviser is independent notwithstanding that it is advising, has advised or is seeking to advise, an offeror in relation to a matter provided that such matter is not material. In assessing materiality, the Executive will continue to examine the strength of the overall relationship between the offeror and the adviser and its group as described above.

Secondly, the Executive will be more likely than it has been in the past to conclude that an adviser is independent if it has acted for the offeror only infrequently in the period investigated by the Executive leading up to its proposed appointment and the offeror has instructed a number of other financial advisers in the same period.

The Executive recommends consultation as soon as practicable in cases where there is any doubt about the independence of an adviser.

**PRACTICE STATEMENT NO 21 CONTINUED**

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**7 March 2008**

## **PRACTICE STATEMENT NO 22**

### **IRREVOCABLE COMMITMENTS, CONCERT PARTIES AND RELATED MATTERS**

#### **1. Introduction**

- 1.1 This Practice Statement describes the way in which the Panel Executive normally interprets and applies certain provisions of the Takeover Code to irrevocable commitments to accept an offer which include an undertaking to vote the shares to which the irrevocable commitment relates in a particular way.
- 1.2 The principal issues under the Code that are considered in this Practice Statement are whether, as a result of entering into an irrevocable commitment which includes a voting undertaking:
  - (a) the shareholder should be considered to be “acting in concert” with the offeror for the purposes of Note 9 on the definition of “acting in concert”;
  - (b) the offeror should be considered to be “interested” in the shares or interests in shares to which the irrevocable commitment relates; and
  - (c) the offeror or shareholder should be required to make a disclosure.
- 1.3 While this Practice Statement refers only to irrevocable commitments to accept an offer, similar reasoning will apply to irrevocable commitments:
  - (a) not to accept an offer;
  - (b) to procure that any other person accepts or does not accept an offer; and
  - (c) to vote (or to procure that any other person vote) in favour of or against a resolution of an offeror or the offeree company (or of its shareholders) in the context of an offer, including a resolution to approve or to give effect to a scheme of arrangement.

Where a shareholder enters into an irrevocable undertaking with the offeree company, for example, not to accept an offer or to procure that another person does not accept an offer, references in this Practice Statement to Note 9 on the definition of “acting in concert” would be relevant in determining whether the shareholder is “acting in concert” with the offeree company.

## PRACTICE STATEMENT NO 22 CONTINUED

### 2. Concert parties and irrevocable commitments

2.1 Note 9 on the definition of “acting in concert” provides as follows:

#### **“9. Irrevocable commitments**

*A person will not normally be treated as acting in concert with an offeror or the offeree company by reason only of giving an irrevocable commitment. However, the Panel will consider the position of such a person in relation to the offeror or the offeree company (as the case may be) in order to determine whether he is acting in concert if ... :*

(a) *the terms of the irrevocable commitment give the offeror or the offeree company (as the case may be) either the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to the shares or general control of them;*

...

...”.

2.2 Entering into an irrevocable commitment which relates only to acceptance of an offer will not therefore, of itself, normally result in a shareholder being considered to be acting in concert with an offeror.

2.3 Although the precise wording of a voting undertaking contained in an irrevocable commitment to accept an offer may vary from case to case, it generally comprises, among other things, an undertaking to vote the relevant shares in accordance with the instructions of the offeror in the context of:

(a) resolutions required to implement its offer; and

(b) resolutions which, if passed, might result in a condition of its offer not being fulfilled or which might impede or frustrate the offer in some way (for example, by approving a competing scheme of arrangement).

2.4 This raises the question of whether the inclusion of a voting undertaking of this kind in an irrevocable commitment to accept an offer should be regarded as giving the offeror *“the right ... to exercise or direct the exercise of the voting rights attaching to the shares or general control of them”* for the purposes of paragraph (a) of Note 9 on the definition of “acting in concert”.

2.5 The Executive considers that, in entering into a voting undertaking of the type described above, a shareholder is doing no more than what is

## PRACTICE STATEMENT NO 22 CONTINUED

logically consistent with his irrevocable commitment to accept the offer, since he is undertaking to vote his shares in the context of that offer in a manner which is supportive of his acceptance decision. As such, the Executive would not normally consider the offeror to have acquired a right to exercise or direct the exercise of the voting rights attaching to, or general control of, the relevant shares for the purposes of Note 9 on the definition of “acting in concert”, provided that the voting undertaking is:

- (a) given in the context of an irrevocable commitment to accept the offer;
  - (b) limited to the duration of the offer or, if earlier, until the irrevocable commitment otherwise ceases to be binding; and
  - (c) limited to matters which relate to ensuring that its offer is successful.
- 2.6 Consequently, a shareholder which enters into an irrevocable commitment to accept an offer which includes a voting undertaking that satisfies the criteria above would not normally be considered by the Executive to be acting in concert with the offeror.

### 3. Interests in securities and irrevocable commitments

- 3.1 The definition of “interests in securities” provides, among other things, as follows:

“... a person will be treated as having an interest in securities if:

...

(2) he has the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to them or has general control of them;

...

(5) in the case of Rule 5 only, he has received an irrevocable commitment in respect of them.”.

- 3.2 Where an offeror has received an irrevocable commitment to accept its offer, that will not, of itself, result in the offeror being considered to be interested in the shares to which the irrevocable commitment relates (other than for the purposes of Rule 5). However, where an irrevocable commitment includes a voting undertaking, the question arises of whether this gives the offeror “*the right ... to exercise or direct the exercise of the voting rights attaching to [the shares] or general control of*

**PRACTICE STATEMENT NO 22 CONTINUED**

*them*” for the purposes of paragraph (2) of the definition of “interests in securities”.

- 3.3 For the same reasons as are described in paragraph 2.5 in the context of the definition of “acting in concert”, and provided that the three criteria referred to in paragraphs 2.5(a) to (c) are satisfied, the Executive would not normally consider an offeror which enters into an irrevocable commitment including a voting undertaking with a shareholder to be interested in the shares to which the irrevocable commitment relates (other than for the purposes of Rule 5, pursuant to paragraph (5) of the definition of “interests in securities”).

**4. Disclosure**

- 4.1 If a party to an offer or any person acting in concert with it procures an irrevocable commitment prior to the commencement of the offer period, it must publicly disclose the details 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). In addition, if an irrevocable commitment is obtained during the offer period, the details would be required to be disclosed by no later than 12 noon on the next business day. Further details in this regard are set out in Note 5(a) on Rule 8 and Rule 2.11 together with the related Notes.
- 4.2 In so far as voting undertakings are concerned, paragraph (a) of the definition of “dealings” provides, among other things, that:

“A dealing includes ... :

(a) the acquisition or disposal ... of the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to securities, or of general control of securities;

...”.

- 4.3 However, the Executive considers that, in applying paragraph (a) of the definition of “dealings”, neither the procuring of a voting undertaking by the offeror, nor the entering into of such a voting undertaking by a shareholder, would amount to a dealing and neither action would therefore need to be disclosed under Rule 8.1 or Rule 8.3 provided that the three criteria referred to in paragraphs 2.5(a) to (c) above are satisfied.

**PRACTICE STATEMENT NO 22 CONTINUED**

- 4.4 Pursuant to Rule 26.2(a), copies of irrevocable commitments procured by a party to an offer or any person acting in concert with it must be published on a website from the time of the announcement of a firm intention to make an offer (or, if later, the date of the commitment).

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**10 July 2008**

**Last amended 1 January 2015**

## **PRACTICE STATEMENT NO 23**

### **RULE 21.2 – INDUCEMENT FEES AND OTHER OFFER RELATED ARRANGEMENTS**

#### **1. Introduction**

- 1.1 Rule 21.2(a) provides that, except with the consent of the Panel, neither the offeree company nor any person acting in concert with it may enter into any offer-related arrangement with either the offeror or any person acting in concert with it during an offer period or when an offer is reasonably in contemplation. Rule 21.2(b) clarifies that this prohibition includes inducement fee arrangements generally and other arrangements that have a similar or comparable financial or economic effect and also describes certain permitted offer-related arrangements.
- 1.2 Notwithstanding the general prohibition on inducement fee arrangements, Note 1 (“*Competing offerors*”) and Note 2 (“*Formal sale process*”) on Rule 21.2 explain that, in certain limited circumstances, the Panel may permit an offeree company to enter into one or more inducement fee arrangements with an offeror (or offerors) provided that:
- (a) the aggregate value of the inducement fee or fees that may be payable by the offeree company is *de minimis* (i.e. normally no more than 1% of the value of the offeree company calculated by reference to the price of the offer or competing offer (or, if there are two or more competing offerors, the first competing offer) at the time of the announcement made under Rule 2.7); and
  - (b) any inducement fee is capable of becoming payable only if an offer becomes or is declared wholly unconditional.
- 1.3 The purpose of this Practice Statement is to clarify the way in which the Executive applies Rule 21.2 to inducement fee agreements.

#### **2. Calculation of the maximum amount payable**

- 2.1 In determining the maximum amount permitted for an inducement fee, the Executive will normally consider that:
- (a) the 1% limit can be calculated on the basis of the fully diluted equity share capital of the offeree company, but taking account only those options and warrants that are “in the money”. When determining the value of the fully diluted equity share capital, the Executive will consider the value attributable to options and warrants to be their “see through” value (being their value by reference to the value of the offer for the shares to which they relate, net of any exercise price). The Executive will consider the value attributable

**PRACTICE STATEMENT NO 23 CONTINUED**

to convertible securities to be the offer price for the shares into which the convertible securities may be converted multiplied by the conversion ratio;

- (b) any VAT payable as a result of the payment of an inducement fee to an offeror should be taken into account in determining whether the 1% limit would be exceeded (except to the extent that such VAT is recoverable by the offeree company); and
  - (c) in a securities exchange offer, the value of the offeree company will be fixed by reference to the value of the offer as stated in the firm offer announcement and will not fluctuate as a result of subsequent movements in the price of the consideration securities.
- 2.3 The Executive also interprets Note 1 on Rule 21.2 as permitting an offeree company to agree inducement fees with multiple offerors or potential offerors, provided that the aggregate amount payable by the offeree company in respect of all such inducement fees does not exceed 1% of the value of the offeree company calculated on the basis described above.

**3. Consulting the Executive**

- 3.1 The Executive should be consulted at the earliest opportunity in all cases where there is any doubt as to whether a proposed agreement, arrangement or commitment is subject to Rule 21.2 or where it is proposed that an offeree company should enter into one or more inducement fee arrangements.
- 3.2 In addition, the Executive will be keen to ensure that offerors do not seek to bring claims against offeree companies in relation to breaches of the agreements, arrangements and commitments that are permitted under Rule 21.2(b) as a means of recovering offer related costs, losses and expenses that they are not able to recover as a result of the general prohibition on inducement fee arrangements in Rule 21.2.

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**10 July 2008**

**Amended 19 September 2011**

## **PRACTICE STATEMENT NO 24**

### **APPROPRIATE OFFERS AND PROPOSALS UNDER RULE 15**

#### **1. Introduction**

- 1.1 Rule 15 of the Takeover Code requires that, when an offer is made for voting equity share capital or for other transferable securities carrying voting rights (a “voting equity offer”) and the offeree company has any outstanding securities which are convertible into, or which comprise options or other rights to subscribe for, securities to which the voting equity offer relates (“Rule 15 securities”), the offeror must make an appropriate offer or proposal to the holders of those Rule 15 securities. The purpose of Rule 15 is to safeguard the interests of holders of Rule 15 securities in their capacity as potential holders of the securities to which the voting equity offer relates. An offer or proposal is therefore required for Rule 15 securities whether or not they are currently convertible or exercisable.
- 1.2 The Panel Executive’s interpretation and application of certain of the provisions of Rule 15 are set out below.

#### **2. “Appropriate” offer or proposal**

##### **(a) “See through” value**

- 2.1 In order to be “appropriate” in the terms of Rule 15(a), the Executive considers that an offer or proposal will normally need to be for no less than “see through” value, i.e. the value of the Rule 15 securities by reference to the value of the voting equity offer.
- 2.2 The see through value of options, warrants and other rights to subscribe should be calculated net of any exercise price. This is illustrated by the following Example 1:

##### *Example 1*

*Offeror A offers 100p for each ordinary share in offeree company B. Each offeree company B warrant entitles the holder to subscribe for one ordinary share in offeree company B at an exercise price of 10p. The see through value of each offeree company B warrant by reference to the value of the offer for the ordinary shares is therefore 90p.*

- 2.3 Where the see through value of Rule 15 securities is positive, as in Example 1 above, an offer or proposal at no less than that value will normally be regarded by the Executive to be appropriate.

**PRACTICE STATEMENT NO 24 CONTINUED**

- 2.4 Where the see through value of Rule 15 securities is zero or negative, no Rule 15 offer or proposal will normally be required. This is illustrated by the following Example 2:

*Example 2*

*Offeror C offers 10p for each ordinary share in offeree company D. Each offeree company D option entitles the holder to subscribe for one ordinary share in offeree company D at an exercise price of 30p. The see through value of each offeree company D option by reference to the value of the offer for the ordinary shares is therefore minus 20p. No Rule 15 offer or proposal in respect of such options would normally be required.*

**(b) Convertible securities and other Rule 15 securities which are admitted to trading**

- 2.5 Since convertible securities do not have an exercise price, their see through value will always be positive and an offer or proposal at no less than see through value will be required, even if that offer or proposal would be below the market price of the convertible securities.
- 2.6 Where the market price (if any) of any Rule 15 securities is higher than their see through value, for example where a convertible security is trading as a fixed income security, the Executive does not require a Rule 15 offer or proposal to be at market price or above. This is because, as indicated above, the purpose of Rule 15 is to safeguard the interests of holders of Rule 15 securities in their capacity as potential holders of the securities to which the voting equity offer relates. These points are illustrated by the following Example 3:

*Example 3*

*Offeror E offers 200p for each ordinary share in offeree company F. Each offeree company F convertible bond entitles the holder to convert that bond into one ordinary share in offeree company F. The current market price of offeree company F convertible bonds is 220p. The see-through value of each offeree company F convertible bond by reference to the value of the offer for the ordinary shares is therefore 200p and a Rule 15 offer or proposal at no less than this value will normally be required. However, there is no requirement for the Rule 15 offer or proposal in respect of the convertible bonds to be at no less than the current market price of 220p.*

**PRACTICE STATEMENT NO 24 CONTINUED****(c) No requirement to offer same specie as voting equity offer**

- 2.7 The Executive will regard a Rule 15 offer or proposal to be appropriate if made at no less than see through value. However, the Executive does not require any particular form of consideration to be offered to holders of Rule 15 securities. In particular, there is no requirement for holders of Rule 15 securities to be offered the same form of consideration as offered under the voting equity offer.

**(d) Securities exchange offers**

- 2.8 Where the voting equity offer is a securities exchange offer but offeror securities are not being offered to the holders of Rule 15 securities, the see through value of the Rule 15 securities should normally be calculated by reference to the value of the voting equity offer on the latest practicable date prior to the publication of the Rule 15 offer or proposal.
- 2.9 Where the voting equity offer is a securities exchange offer and offeror securities are also being offered to the holders of Rule 15 securities, the Executive will require the exchange ratio offered to holders of Rule 15 securities to be no less favourable than that offered under the voting equity offer. This is illustrated in the following Example 4:

*Example 4*

*Offeror G offers two new offeror G shares for each ordinary share in offeree company H. Each offeree company H convertible preference share entitles the holder to convert that share into one ordinary share in offeree company H. If offeror G wishes to offer new offeror G shares to holders of offeree company H convertible preference shares, the Executive will require the exchange ratio of the Rule 15 offer or proposal to be no worse than the “two for one” ratio offered to holders of offeree company H ordinary shares.*

**(e) “Time value” and adjustment mechanisms**

- 2.10 Rule 15 does not require an “appropriate” offer or proposal to reflect the ability of holders of Rule 15 securities to exercise a conversion, option or subscription right over a period of time.
- 2.11 However, where the rights attached to Rule 15 securities include an adjustment mechanism which affects the exercise terms of the securities in the event of an offer for the offeree company, an “appropriate” offer or proposal should normally take the adjusted exercise terms into account. If the adjusted exercise terms are not capable of immediate determination, the Executive should be consulted.

**PRACTICE STATEMENT NO 24 CONTINUED****(f) *Alternative offers***

- 2.12 Where alternative voting equity offers are made, the see through value of any Rule 15 securities should normally be calculated by reference to the voting equity offer with the highest value as at the latest practicable date prior to the publication of the Rule 15 offer or proposal, even if that offer has ceased to be open for acceptance by existing offeree company shareholders by that time.

**(g) *Equality of treatment***

- 2.13 The final sentence of Rule 15(a) states that “Equality of treatment is required.” The equality of treatment required is as between holders of the same class of Rule 15 security and not as between (i) holders of different classes of Rule 15 securities, or (ii) holders of Rule 15 securities and shareholders in the offeree company.

**3. Independent advice and views of the offeree company board**

- 3.1 Under Rule 15(b), the board of the offeree company must obtain competent independent advice on a Rule 15 offer or proposal and the substance of such advice must be made known to the holders of Rule 15 securities, together with the board’s views on the offer or proposal. In certain circumstances, however, as indicated in Section 4 below, it may not be practicable for a Rule 15 offer or proposal to be published until after the voting equity offer becomes or is declared wholly unconditional, by which time the board of the offeree company will be under the control of the offeror.
- 3.2 The Executive expects the board of the offeree company to take appropriate steps at the outset of the voting equity offer to ensure that Rule 15(b) will be complied with at the time when any Rule 15 offer or proposal is made, for example, by ensuring that the mandate of the adviser retained pursuant to Rule 3 will extend to advising on any Rule 15 offer or proposal. In the event that there are no independent directors on the board of the offeree company at the time when the Rule 15 offer or proposal is made, the board of the offeree company must nevertheless obtain independent advice on the offer or proposal and make the substance of such advice known to the holders of Rule 15 securities.

**4. Publication of a Rule 15 offer or proposal**

- 4.1 Under Rule 15(c), whenever practicable, the offer or proposal should be sent to holders of Rule 15 securities at the same time as the offer document is published. If this is impracticable, the Executive should be consulted and the Rule 15 offer or proposal sent as soon as possible thereafter.

**PRACTICE STATEMENT NO 24 CONTINUED**

4.2 The Executive will take all relevant factors into account in considering when it is practicable for a Rule 15 offer or proposal to be sent to holders of Rule 15 securities. If the Rule 15 offer or proposal is not sent to holders of Rule 15 securities at the same time as the offer document in relation to the voting equity offer, the Executive will normally expect it to be sent, at the latest, as soon as possible after the voting equity offer becomes or is declared wholly unconditional.

**5. “Exercise and accept” proposals**

5.1 Note 1 on Rule 15 provides that:

- (i) all relevant documents, announcements and other information sent to offeree shareholders and persons with information rights in connection with the voting equity offer must also, where practicable, be sent simultaneously to holders of Rule 15 securities; and
- (ii) if holders of Rule 15 securities are able to exercise their rights during the course of the voting equity offer, and to accept the voting equity offer in respect of the resulting shares, their attention should be drawn to this in the relevant documents.

5.2 Where holders of Rule 15 securities are able to exercise their conversion, option or subscription rights prior to or upon the voting equity offer becoming or being declared wholly unconditional, the Executive will normally regard a proposal that such holders exercise their rights and accept the voting equity offer (an “exercise and accept” proposal) as being appropriate for the purposes of Rule 15(a).

5.3 However, where alternative voting equity offers are made, an exercise and accept proposal may not satisfy an offeror’s obligations under Rule 15 if the alternative offer with the highest value (see paragraph 2.12 above) ceases to be open for acceptance at any time earlier than the end of the 21 day period referred to in paragraph 6.2 below, even if the holders of the Rule 15 securities in question had been able to exercise their conversion, option or subscription rights when that higher alternative offer was open for acceptance. This is because such holders should not be required to exercise their conversion, option or subscription rights in advance of knowing whether or not the offer for the voting equity will be successful. The Executive should be consulted in such circumstances.

5.4 Where an offeror’s obligations under Rule 15 are to be satisfied by way of an “exercise and accept” proposal, this fact should be stated clearly in the relevant documents issued to holders of the Rule 15 securities pursuant to Note 1 on Rule 15. In addition, the Executive regards

**PRACTICE STATEMENT NO 24 CONTINUED**

Rule 15(b) as requiring the board of the offeree company to obtain separate independent advice on the “exercise and accept” proposal and to make such advice known to the holders of Rule 15 securities, together with the board’s views on the proposal.

**6. Rule 15 offer or proposal to be open for at least 21 days**

- 6.1 The Executive’s practice is normally to require a Rule 15 offer or proposal to be open for at least 21 days following the date on which the relevant documentation is sent to holders of Rule 15 securities.
- 6.2 The Executive notes that Rule 31.4 provides, broadly, that after the voting equity offer has become or is declared unconditional as to acceptances, it must remain open for acceptance for not less than 14 days after the date on which it would otherwise have expired. Notwithstanding this, if the only “appropriate” Rule 15 offer or proposal made by an offeror is an “exercise and accept” proposal, the Executive’s practice is normally to require the voting equity offer to remain open for not less than 21 days after the later of:
- (i) the date on which the documentation setting out the “exercise and accept” proposal is sent to the holders of the Rule 15 securities; and
  - (ii) the date on which the voting equity offer becomes or is declared wholly unconditional.

**7. Rule 16**

- 7.1 See through value is the minimum value at which a Rule 15 offer or proposal must be made in order for it to be appropriate and it is therefore normally permissible for a Rule 15 offer or proposal to be made at above that minimum value.
- 7.2 Rule 16.1 provides that, except with the consent of the Panel, an offeror may not make arrangements with offeree company shareholders if there are favourable conditions attached which are not being extended to all shareholders. Therefore, where:
- (i) certain persons are both holders of Rule 15 securities and also offeree company shareholders; and
  - (ii) a Rule 15 offer or proposal is made at a value which is higher than see through value,

the Executive will be concerned to ensure that the Rule 15 offer or proposal does not have the effect of affording such persons favourable treatment (when compared to other shareholders) as prohibited by Rule 16.1.

**PRACTICE STATEMENT NO 24 CONTINUED**

The Executive should be consulted in the case of any doubt in relation to any of the above points.

*Practice Statements are issued by the Panel Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Takeover Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk).*

**10 July 2008**

**Last amended 19 September 2011**

## **PRACTICE STATEMENT NO 25**

### **DEBT SYNDICATION DURING OFFER PERIODS**

#### **1. Introduction**

- 1.1 This Practice Statement describes the way in which the Panel Executive normally interprets and applies certain provisions of the Takeover Code in the context of the syndication of debt financing during offer periods. The Practice Statement is intended to assist offerors and their advisers who are seeking to establish procedures that will enable debt financing to be syndicated during offer periods without breaching the provisions of the Code. The same principles will also apply to the raising of other forms of financing during offer periods although the application of the provisions of the Code will vary according to the specific circumstances.
- 1.2 This Practice Statement was developed at the request of, and with assistance from, the Loan Market Association (the “LMA”) and the Association for Financial Markets in Europe. As a result of this exercise, the LMA published a revised “Recommended Form of Confidentiality and Front Running Letter for Primary Syndication” (the “LMA confidentiality letter”), together with a memorandum explaining the background to the relevant provisions (“Note for LMA Members on discussions with the Takeover Panel and LMA Confidentiality Letter”). A copy of the LMA confidentiality letter and the related explanatory memorandum are available in the “Documents” section of the LMA’s website ([www.lma.eu.com](http://www.lma.eu.com)).
- 1.3 References in the remainder of this Practice Statement to the following expressions have the following meanings:
- (a) “debt syndication” refers to the primary syndication of debt financing in the context of transactions that are subject to the provisions of the Code; and
  - (b) “syndicatees” includes potential debt finance providers approached to take part in a proposed debt syndication in addition to those debt finance providers who are allocated a debt participation following the completion of the syndication process.

#### **2. Debt syndication**

- 2.1 The Executive understands that an offeror seeking to raise debt finance for a cash offer (or an offer involving a cash component) would normally appoint one or more primary lenders to act as Mandated Lead Arranger for the transaction (an “MLA”). MLAs are generally responsible for advising an offeror in relation to the type of debt facilities that it would

**PRACTICE STATEMENT NO 25 CONTINUED**

require to effect a transaction. In addition, MLAs will identify potential members of a syndicate to provide the facilities.

2.2 The Executive is aware that a debt syndication is often conducted in two separate stages:

- (a) before the announcement of a firm intention to make an offer, when the MLAs themselves commit to providing the debt facilities required to implement the offer; and
- (b) following the announcement of a firm intention to make an offer, when the MLAs seek further lenders to participate in the facilities and take a share of the MLA's financing commitment.

While this Practice Statement describes the application of the Code to the syndication of debt financing following the announcement of a firm intention to make an offer, the same considerations will apply prior to that time when primary financing commitments are sought from MLAs in relation to the debt facilities required to implement an offer.

2.3 The Executive understands that, as part of the process of seeking further lenders to take a share of the financing commitment, MLAs produce and distribute marketing information in relation to:

- (a) the debt facilities required; and
- (b) the offeror and offeree company.

This information would generally be more detailed than that normally provided to shareholders in the context of an offer and normally includes a detailed term sheet for the required debt facilities, a description of the offer, financial information (comprising forecasts and projections in relation to both the offeror and the offeree company) and a business plan for the enlarged group (generally over a period of three to five years).

2.4 The Executive understands that, when MLAs seek further lenders to participate in the facilities and take a share of the MLAs' financing commitment, a confidentiality agreement would be entered into between an MLA and each syndicatee pursuant to which the syndicatee would undertake, among other things, to keep the information confidential and not to use it for unlawful purposes. The Executive understands that the form of confidentiality agreement entered into between MLAs and syndicatees has generally been the LMA confidentiality letter.

**PRACTICE STATEMENT NO 25 CONTINUED****3. Application of the Code to debt syndication**

3.1 General Principle 1 of the Code provides that all holders of the securities of an offeree company of the same class must be afforded equivalent treatment. This principle underpins the following provisions of the Code that are potentially relevant to the debt syndication process:

- (a) Rule 20.1 (“Equality of information to shareholders and persons with information rights”), which provides that information about parties to an offer must be made equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner; and
- (b) Rule 16.1 (“Special deals with favourable conditions”), which provides that, except with the consent of the Panel, an offeror or persons acting in concert with it may not make any arrangements with shareholders, and may not deal or enter into arrangements to deal in shares of the offeree company, or enter into arrangements which involve acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders.

3.2 Details of how these provisions are applied by the Executive in the context of debt syndication during an offer period are set out below.

**4. Rule 20.1 (“Equality of information to shareholders and persons with information rights”)**

4.1 In order to satisfy Rule 20.1, any non-public information about the offeror or the offeree company provided to a syndicatee which holds shares in the offeree company must also be made equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner. As noted above, the level of information provided to syndicatees normally goes beyond that which is provided to shareholders in the context of offers and the information is normally provided at an earlier stage. In addition, some of this information may not actually be capable of being provided to shareholders generally (for example, because it includes financial projections that comprise profit forecasts for the purposes of the Code which would not be capable of being reported on to the appropriate standard).

**(a) Syndicatees which hold (or may hold) shares in the offeree company**

4.2 The Executive considers that there will be no breach of Rule 20.1 as a result of the provision of non-public information about the offeror or the offeree company to a syndicatee which holds (or may hold) shares

**PRACTICE STATEMENT NO 25 CONTINUED**

in the offeree company provided effective information barriers have been established by the syndicatee between the department involved in making decisions in relation to the debt syndication (the “debt department”) and any department responsible for trading, or making investment decisions in relation to, equity investments (together, the “equity department”). The Executive considers that, provided effective information barriers have been established, no further enquiries would need to be made as to whether or not a syndicatee’s equity department does in fact hold shares in the offeree company.

- 4.3 Paragraph 6 below sets out the minimum standards which the Executive considers information barriers would normally need to satisfy in order to be considered effective. The LMA confidentiality letter includes a suggested confirmation to be provided to MLAs by syndicatees that effective information barriers have been established that comply with the minimum standards referred to above.
- 4.4 If an offeror or any of its advisers intends to provide non-public information about the offeror or offeree company to a syndicatee which holds (or may hold) shares in the offeree company but which does not have effective information barriers in place between its equity and debt departments, the Executive should be consulted. This situation could arise where, for example, the same individuals are involved in making decisions in relation to both equity and debt investments or there is otherwise an insufficient degree of separation between the two functions.

***(b) Syndicatees which do not hold shares in the offeree company***

- 4.5 If a syndicatee does not hold shares in the offeree company, the provision of non-public information about the offeror or the offeree company to that syndicatee would not give rise to any issues under Rule 20.1. However, the Executive considers that a breach of Rule 20.1 is capable of occurring in the future if a syndicatee acquires shares in the offeree company during the offer period. Such a breach could be avoided if an MLA were to require a syndicatee to:
- (a) establish effective information barriers between the syndicatee’s equity and debt departments; or
  - (b) provide a confirmation and undertaking to the MLA that neither the syndicatee nor any other member of its group holds shares in the offeree company or, save as expressly permitted by the Panel, will acquire any such shares prior to the end of the offer period.

**PRACTICE STATEMENT NO 25 CONTINUED**

The undertaking referred to in paragraph (b) above would not prevent the acquisition of shares in the offeree company:

- (i) carried out in a client-serving capacity by any part of the trading operations of a syndicatee that has recognised intermediary status; or
- (ii) with the consent of the Panel, by a syndicatee as security for a loan in the normal course of business.

Suggested wording for the confirmation and undertaking that would be considered by the Executive to be appropriate in these circumstances is set out in the LMA confidentiality letter.

**5. Rule 16.1 (“Special deals with favourable conditions”)**

5.1 If a syndicatee holds shares in the offeree company, or acquires such shares during the offer period, then Rule 16.1 may be in point. The Executive’s concern in this context is primarily based on the possibility that favourable debt terms might be used as a means of providing additional value to a syndicatee in its capacity as an offeree company shareholder. This would be the case if, for example, a syndicatee’s equity department agreed that it would accept a lower offer for its shares in the offeree company than would otherwise have been the case because the syndicatee’s debt department was allocated a participation in the syndicate, perhaps on attractive terms. In addition, the Executive is concerned to ensure that the decision of a syndicatee’s equity department as to whether or not it should accept the offer should not otherwise be influenced by the participation of the syndicatee’s debt department in the syndicate.

***(a) Information barriers between a syndicatee’s equity and debt departments***

5.2 The Executive believes that the knowledge that a syndicatee’s equity department has about the participation of its debt department in a debt syndication, and the terms of that participation, is critical in determining the application of Rule 16.1. This is because the Executive considers that, without this knowledge, it would be unlikely that value would be transferred between the equity and debt components of the transaction or that the decision of the equity department as to whether or not it should accept an offer would be influenced.

5.3 In view of this, the Executive normally takes the view that, in relation to a syndicatee which holds shares in the offeree company or which

**PRACTICE STATEMENT NO 25 CONTINUED**

acquires shares during the offer period, no problems would arise under Rule 16.1 provided effective information barriers are in place between its equity and debt departments. Further details in relation to the nature of the information barriers that would be considered by the Executive to be effective in preventing issues arising under Rule 16.1 in this context are set out in paragraph 6 below.

- 5.4 If effective information barriers have not been established, the Executive will normally require further information to be provided to the Executive in relation to the terms of the debt that is being syndicated as set out in paragraphs 5.5 and 5.6 below.

***(b) Debt being syndicated is on 'market terms'***

- 5.5 If the offeror is able to demonstrate to the Executive's satisfaction that the debt being syndicated is on 'market terms', the Executive would not normally consider there to be a problem under Rule 16.1. This is on the basis that, if an offeror is able to prove that a syndicatee has been allocated 'plain vanilla' debt with no special features which is on similar terms to debt issued in comparable transactions, the Executive would consider the scope for a transfer of value to occur as between the equity and debt components of the transaction, or for the decision of the syndicatee's equity department to be influenced, would be minimised.
- 5.6 If, on the other hand, the debt that is being syndicated is not on 'market terms', the Executive will normally require further information in order to determine whether there is an issue under Rule 16.1. For example, the Executive would seek to gain an understanding of the identity of the syndicatees, the reasons why the syndicatees were invited to participate in the syndicate, the basis and terms on which the debt was allocated to syndicatees, and the extent to which syndicatees hold shares in the offeree company.

**6. Information barriers**

- 6.1 The Executive believes that establishing an effective information barrier between a syndicatee's equity and debt departments would be essential in preventing issues that may otherwise arise under Rule 20.1 and would also be capable of addressing issues that would otherwise arise under Rule 16.1.
- 6.2 The Executive does not believe that it is appropriate for it to specify detailed requirements for effective information barriers. However, the Executive has identified the following minimum standards without which it would not normally consider an information barrier to be effective:

**PRACTICE STATEMENT NO 25 CONTINUED****(a) Personnel**

- (i) A syndicatee's equity and debt departments should comprise separate personnel. The Executive will normally be prepared to disregard members of senior management and compliance staff for these purposes provided they do not participate in investment decisions relating to the proposed transaction and do not share non-public information about the transaction with persons who are involved in making those investment decisions.
- (ii) Members of a syndicatee's equity and debt departments must be made aware that an information barrier exists between the two departments.
- (iii) Members of a syndicatee's equity and debt departments should not share offices. If possible, each department should be physically separated from, and should not be capable of being accessed by, the other department.

**(b) Technology and systems**

- (i) Members of a syndicatee's equity and debt departments must not be able to access non-public documents created, edited or received by the other department.
- (ii) Computers and other electronic equipment used by a syndicatee's equity and debt departments must not be used by, or accessible to, the other department.

**(c) Ring-fencing of information**

- Internal files, records and other non-public deal information prepared by a syndicatee's equity or debt department should not be shared with, or be capable of being accessed by, the other department.
- 6.3 The Executive believes that an information barrier between a syndicatee's equity and debt departments would be more likely to be effective if established on a permanent rather than *ad hoc* basis. If it is proposed to establish an *ad hoc* information barrier, the Executive should be consulted. In such circumstances, the Executive will seek assurances that the minimum standards for effective information barriers described in paragraph 6.2 above will be complied with.
- 6.4 Confirmation should be obtained from each syndicatee, to the reasonable satisfaction of the MLA and the offeror's financial adviser, that an effective information barrier has been established. Where an MLA and/or financial adviser considers that a syndicatee lacks experience in dealing

**PRACTICE STATEMENT NO 25 CONTINUED**

with transactions that are subject to the Code, enquiries should be made to confirm that information barriers have been established which comply with the minimum standards referred to above, as a written confirmation alone will not necessarily be sufficient in such cases.

- 6.5 The Executive recognises that syndicatees may participate regularly in transactions that are subject to the Code. If confirmation has been provided to the reasonable satisfaction of the MLA and the financial adviser that a particular syndicatee has established adequate information barriers, the Executive will not expect further enquiries, beyond a written confirmation, to be undertaken on every occasion in relation to that syndicatee.

**7. Relationship between financial advisers and MLAs**

- 7.1 Paragraph 3(f) of the Introduction to the Code provides that:

“The Code applies to a range of persons who participate in, or are connected with, or who in any way seek to influence, intervene in, or benefit from, takeovers or other matters to which the Code applies.

The Code also applies to all advisers to such persons, and all advisers in so far as they advise on takeovers or other matters to which the Code applies. Financial advisers to whom the Code applies have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and will comply with them and that the Panel is consulted whenever appropriate.”.

- 7.2 The Executive regards a financial adviser to an offeror as being principally responsible for ensuring that the offeror complies with the Code in the context of a debt syndication. In view of this, the Executive will expect the financial adviser to an offeror to be the principal point of contact with the Executive for resolving issues arising under the Code during the debt syndication process. In particular, the Executive will expect the financial adviser to an offeror to ensure that:

- (a) MLAs are aware of the relevant provisions of the Code and the responsibilities that an MLA has in ensuring that the provisions of the Code are complied with; and
- (b) appropriate confirmations and, where appropriate, undertakings are obtained from syndicatees (by an MLA or by the financial adviser itself) on the basis described in this Practice Statement.

**PRACTICE STATEMENT NO 25 CONTINUED**

7.3 Notwithstanding paragraph 7.2 above, the Executive also regards MLAs as being responsible for ensuring that the provisions of the Code are complied with and for addressing issues arising under the Code during the debt syndication process. In view of this, the Executive recognises that MLAs may prefer to contact the Executive directly rather than communicate through the offeror's financial adviser in relation to how they are best able to discharge their responsibilities. The Executive expects MLAs to raise issues arising under the Code of which they become aware during the debt syndication process with the offeror's financial adviser and the Executive in a timely manner.

*Practice Statements are issued by the Panel Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Takeover Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk).*

**17 June 2009**

**Amended 19 September 2011**

## PRACTICE STATEMENT NO 26

### SHAREHOLDER ACTIVISM

#### 1. Introduction and summary

- 1.1 The Panel Executive understands that concerns have recently been expressed that certain provisions of the Takeover Code (the “Code”) act as a barrier to co-operative action by fund managers and institutional shareholders. Specifically, concerns have been expressed that collective shareholder action (for example, shareholders jointly seeking to bring influence to bear on the board of a company) could be constrained by the Executive’s application of the Code’s “acting in concert” provisions and mandatory offer requirements.
- 1.2 The Executive does not believe that the relevant provisions of the Code have either the intention or the effect of acting as a barrier to co-operative action by fund managers and institutional shareholders or of constraining normal collective shareholder action. This Practice Statement therefore describes the way in which the Executive interprets and applies the relevant provisions of the Code in this area.
- 1.3 In summary, a mandatory offer may only be triggered by activist shareholders if both of the following tests are satisfied:
- (a) those shareholders requisition a general meeting to consider a “board control-seeking” resolution or threaten to do so; and
  - (b) after an agreement or understanding is reached between the activist shareholders that a “board control-seeking” resolution should be proposed or threatened, those shareholders acquire interests in shares such that the shares in which they are interested together carry 30% or more of the voting rights in the company (or, if they are already interested in shares carrying 30% or more of the voting rights of the company, they acquire further interests in shares).

For these purposes, a resolution will not normally be considered to be “board control-seeking” unless it seeks to replace existing directors with directors who have a significant relationship with the requisitioning shareholders with the result that those shareholders would effectively be in a position to control the board. A resolution will not normally be considered to be “board control-seeking” if the directors to be appointed are independent of the activist shareholders or if the primary purpose of the proposal is to appoint additional non-executive directors in order to improve the company’s corporate governance.

**PRACTICE STATEMENT NO 26 CONTINUED**

- 1.4 As stated below, the following factors would not of themselves lead the Executive to conclude that a concert party had come together:
- (a) discussions between shareholders about possible issues which might be raised with a company's board;
  - (b) joint representations by shareholders to the board; and
  - (c) the agreement by shareholders to vote in the same way on a particular resolution at a general meeting.
- 1.5 In addition, a proposal to change the manner in which a company is managed but which does not involve changes to the board will not normally be considered to be "board control-seeking" unless the activist shareholders make it known that, if their initial proposals are not implemented, they will put forward "board control-seeking" proposals.
- 1.6 In practice, "board control-seeking" resolutions are rare and, in the majority of normal collective shareholder actions, no mandatory offer issues would therefore arise. In any event, even if a "board control-seeking" resolution were to be proposed by activist shareholders, no mandatory offer would be required if, at the time that any such agreement or understanding is reached, steps are taken to prevent the acquisition of interests in shares in the relevant company by the activist shareholders.
- 1.7 The current provisions of the Code regarding collective shareholder action were introduced into the Code following consultation in 2002, with the specific aim of assisting normal shareholder activism. Since that time, the Executive has not required any mandatory offer to be made in the context of a "board control-seeking" resolution. If interests in shares were to be acquired in the context of a "board control-seeking" resolution notwithstanding that appropriate measures had been taken to prevent any such acquisitions, the Executive would be much more likely to require the disposal of the relevant interests over an appropriate time period than to require a mandatory offer to be made. In view of this, the Executive believes that the risk of activist shareholders accidentally triggering a mandatory offer requirement is negligible.
- 1.8 The Executive is available for consultation if shareholders have any doubts as to the application of the Code in this area, in particular as to whether a particular proposal would be considered to be "board control-seeking", as described below. The Executive's experience indicates that, where it is consulted, concerns that particular proposals could be considered to be "board control-seeking" arise relatively infrequently.

**PRACTICE STATEMENT NO 26 CONTINUED****2. Relevant provisions of the Code**

- 2.1 Rule 9.1(a) of the Code provides that a mandatory offer must be made to all holders of any class of a company's equity share capital, and to holders of any other class of transferable securities carrying voting rights, when a person acquires an interest in shares which, taken together with shares in which persons acting in concert with him are interested, carry 30% or more of the voting rights of a company. Rule 9.1(b) provides that a mandatory offer must be made if a person, together with persons acting in concert with him, is interested in shares which carry 30% or more of the voting rights of a company (but does not hold shares carrying more than 50% of such voting rights) and the person, or any person acting in concert with him, acquires further interests in shares which increases the percentage of shares carrying voting rights in which they are interested.
- 2.2 Note 1 on Rule 9.1 ("Coming together to act in concert") provides that, when a party has acquired an interest in shares without the knowledge of other persons with whom he subsequently comes together to co-operate as a group to obtain or consolidate control of a company, and the shares in which they are interested at the time of coming together carry 30% or more of the voting rights in that company, the Panel will not normally require a mandatory offer to be made under Rule 9.1.
- 2.3 Note 2 on Rule 9.1 sets out the Panel's approach to collective shareholder action. The first paragraph of the Note provides that:
- (a) the Panel does not normally regard the action of shareholders voting together on a particular resolution as action which of itself indicates that such parties are acting in concert; but
  - (b) the Panel will normally presume shareholders who requisition or threaten to requisition the consideration of a "board control-seeking" proposal at a general meeting, together with their supporters as at the date of the requisition or threat, to be acting in concert with each other and with the proposed directors.
- 2.4 Subsequent paragraphs of Note 2 on Rule 9.1 set out non-exhaustive lists of factors to which the Panel will have regard in determining whether:
- (a) a proposal is "board control-seeking" (these factors are discussed in section 3 below); and
  - (b) it is appropriate for members of a presumed concert party to be held no longer to be acting in concert (these factors were discussed in PCP 10 which was issued by the Code Committee in March 2002).

**PRACTICE STATEMENT NO 26 CONTINUED****3. “Board control-seeking” proposals****(a) Significant relationship between the proposed directors and the activist shareholders/their supporters**

3.1 The most important factor in determining whether a proposal put forward by activist shareholders is “board control-seeking” is whether there is a significant relationship between the proposed directors and the shareholders proposing them or their supporters. As indicated in Note 2 on Rule 9.1, relevant factors in this regard will include:

- (a) whether there is, or has been, any prior relationship between any of the activist shareholders, or their supporters, and any of the proposed directors. For example, whether any of the proposed directors are, or have been, employees, directors or officers of any of the activist shareholders or any of their group companies;
- (b) whether there are any agreements, arrangements or understandings between any of the activist shareholders, or their supporters, and any of the proposed directors with regard to their proposed appointment. For example, whether any of the proposed directors report to any of the activist shareholders; and
- (c) whether any of the proposed directors will be remunerated in any way by any of the activist shareholders, or their supporters, as a result of, or following, their appointment.

3.2 In determining whether a significant relationship exists between any of the activist shareholders, or their supporters, and any of the proposed directors, the Executive will look at the strength of the overall relationship and the time period over which the relationship has existed. In particular, the Executive will seek to gain an understanding of the likelihood of the proposed directors acting under the influence of the activist shareholders or their supporters rather than exercising their own independent judgement as to how the interests of shareholders generally may be advanced. If the Executive concludes that the relationship between the activist shareholders, or their supporters, and the proposed directors is insignificant, the proposal will not be considered to be “board control-seeking” (even if, for example, the activist shareholders propose to replace the entire board) and, therefore, no concert party will be presumed to exist. If an activist shareholder is concerned about whether the relationship between the shareholder, or its supporters, and a proposed director will be regarded by the Panel as “significant”, the Executive may be consulted for guidance and/or a ruling as to how the relationship will be treated for Code purposes.

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3.3 Even if there is a significant relationship, this will not, of itself, lead to the conclusion that a concert party exists. The other factors set out in Note 2 on Rule 9.1 will also need to be considered to determine whether the proposal is “board control-seeking”, as described in sections (b) to (f) below. However, the following factors would not of themselves lead the Executive to conclude that a concert party had come together:

- (a) discussions between shareholders about possible issues which might be raised with a company’s board;
- (b) joint representations by shareholders to the board; and
- (c) the agreement by shareholders to vote in the same way on a particular resolution at a general meeting.

***(b) Number of directors to be appointed or replaced compared with the total size of the board***

3.4 As stated in Note 2 on Rule 9.1, if it is proposed to appoint or replace only one director, the proposal will not normally be considered to be “board control-seeking”. This would be the case even if the director to be appointed or replaced is the chief executive and even if the proposed new director has a relationship with one or more of the activist shareholders. However, there may be exceptions, for example, where it is proposed to replace the executive chairman of a small board.

3.5 Similarly, if the implementation of the proposal would not result in the proposed directors representing a majority of the directors on the board, then the proposal would not normally be considered to be “board control-seeking”.

3.6 The Executive will consider the number of directors to be appointed or replaced compared with the total size of the board at the time at which the relevant meeting is requisitioned or threatened in the light of all relevant information available at that time.

***(c) Board positions held by the directors being replaced and to be held by the proposed directors***

3.7 A proposal to appoint or replace two or more non-executive directors would not normally be considered to be “board control-seeking”. However, a proposal to replace two or more of the chairman, chief executive and finance director would be more likely to be considered to be “board control-seeking”.

**PRACTICE STATEMENT NO 26 CONTINUED*****(d) Nature of the mandate, if any, for the proposed directors***

3.8 If, for example, the primary purpose of the proposal is to appoint additional non-executive directors in order to improve the company's corporate governance, this will not lead to the proposals being considered to be "board control-seeking", subject to other factors indicating to the contrary.

***(e) Whether the activist shareholders/their supporters will benefit as a result of the implementation of the proposal, other than through their interests in shares in the company***

3.9 By way of example, a proposal which would involve the company entering into a major contractual arrangement with one of the activist shareholders would be likely to be considered to be "board control-seeking".

***(f) Relationship between the proposed directors and the existing directors and/or between the existing directors and the activist shareholders/their supporters***

3.10 A board controlling position might be created in certain circumstances even if the proposed directors would not themselves represent a majority of the board. For example, there might be an existing relationship between the proposed directors and the existing directors, or between the existing directors and the activist shareholders.

***(g) Other proposals regarding a company's management***

3.11 In the absence of proposed changes to the board, a proposal by activist shareholders as to the manner in which a company should be managed (for example, a proposal that the company should sell one of its businesses and return the cash proceeds to shareholders) would not, of itself, be considered to be "board control-seeking". This is because the directors would continue to be in charge of the management of the company. However, if the activist shareholders make it known that, if their initial proposals are not implemented, they will put forward "board control-seeking" proposals, this may cause the Executive to determine that the initial proposals should be considered to be "board control-seeking", and that a concert party has arisen.

3.12 For example, if the activist shareholders inform the board that, unless their proposal is implemented, they will requisition a general meeting to replace the three executive directors on a board of five directors with A, B and C, all of whom are non-independent appointees of the activist shareholders, then a concert party would normally arise. If, however, A,

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B and C are independent of the activist shareholders, or if they would be appointed as non-executive directors on a board of seven, then a concert party would not normally be considered to have arisen.

**4. Other issues*****(a) Time of “coming together”***

4.1 As stated in the first paragraph of Note 2 on Rule 9.1, where a group of shareholders requisitions or threatens to requisition a general meeting to consider a “board control-seeking” resolution, they, and their supporters, will be presumed to have come into concert only once an agreement or understanding is reached between them in respect of the “board control-seeking” proposal. As indicated above, preliminary discussions between shareholders on particular matters would not give rise to a presumption of concertedness.

***(b) Supporters subsequent to the date of the requisition not normally considered to be members of the concert party***

4.2 Where a concert party is held to have arisen, its membership will normally be limited to the shareholders who requisition, or threaten to requisition, the general meeting to consider the “board control-seeking” proposal, together with their supporters as at the date of the requisition or threat. Once the requisition, or threat, has been announced, the soliciting of support, including proxies, by the activist shareholders will not result in the shareholders approached being considered to be members of the concert party (subject to there being no other factors evidencing concertedness).

***(c) “Coming together” to act in concert does not, of itself, trigger a mandatory offer***

4.3 As indicated above, even if a proposal is considered to be “board control-seeking”, such that the activist shareholders behind the proposal are presumed to be acting in concert, and the aggregate number of shares in which the members of the concert party are interested carry 30% or more of the company’s voting rights, the “coming together” of the concert party will not normally, of itself, result in a possible requirement to make a mandatory offer. A requirement to make a mandatory offer would only arise if a member of the concert party were to acquire additional interests in shares carrying voting rights. Even then, the Executive would not normally require a mandatory offer to be made if:

(a) such acquisitions were made as a result of an inadvertent mistake;

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- (b) the interests acquired were disposed of within a limited period; and
- (c) appropriate voting restrictions were put in place pending the completion of such disposals.

**(d) Disposals**

4.4 The Executive notes that, although a concert party member might wish to put arrangements in place to ensure that a mandatory offer requirement would not be triggered by the acquisition of additional interests in shares carrying voting rights, there would be no restriction on the disposal of such interests by the members of the concert party. Accordingly, such persons will always be free to realise their investments at any time.

**5. Consultation**

If shareholders have concerns about the application of the Code to them, or are unsure whether their actions may have consequences in relation to “acting in concert”, they may seek guidance or a ruling from the Executive at any time. The Executive is experienced in regulating fast-moving transactions and events and understands the desire of persons who consult it for certainty as to their position under the Code, often within a short period of time.

*Practice Statements are issued by the Panel Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Takeover Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel’s website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk).*

**9 September 2009**

## **PRACTICE STATEMENT NO 27**

### **RULE 21.2 – DIRECTORS’ IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT**

#### **1. Introduction**

- 1.1 This Practice Statement clarifies the way in which the Panel Executive interprets and applies Rule 21.2 of the Takeover Code in relation to irrevocable commitments and letters of intent given by offeree company shareholders who are also directors of the offeree company in connection with an offer.
- 1.2 Rule 21.2(a) provides that, except with the consent of the Panel, neither the offeree company nor any person acting in concert with it may enter into any offer-related arrangement with either the offeror or any person acting in concert with it during an offer period or when an offer is reasonably in contemplation. The offeree company’s directors are presumed to be acting in concert with the offeree company under paragraph (2) of the definition of “acting in concert”. The restriction in Rule 21.2(a) therefore extends to offer-related arrangements entered into between such directors and an offeror.
- 1.3 Rule 21.2(b) defines an “offer-related arrangement” as being any agreement, arrangement or commitment in connection with an offer, including any inducement fee arrangement or other arrangement having a similar or comparable financial or economic effect, subject to certain exclusions. Rule 21.2(b)(iv) provides that irrevocable commitments and letters of intent are excluded from the definition.

#### **2. Interpretation and application of Rule 21.2(b)(iv) in relation to irrevocable commitments and letters of intent given by offeree company shareholders who are also directors of the offeree company**

- 2.1 The Executive considers that Rule 21.2(b)(iv) permits an offeree company shareholder who is also a director of the offeree company to enter into an irrevocable commitment or letter of intent to accept an offer (or to vote in favour of a scheme of arrangement) with respect to the shares in the offeree company held or controlled by the individual concerned. However, the Executive considers that Rule 21.2(b)(iv) does not permit an offeree company shareholder who is also a director of the offeree company to enter into other kinds of offer-related arrangement with the offeror or any person acting in concert with the offeror.
- 2.2 Provisions which have appeared in irrevocable commitments given by offeree company shareholders who are also directors of the offeree

**PRACTICE STATEMENT NO 27 CONTINUED**

company and which the Executive regards as being in breach of Rule 21.2 have included commitments:

- (a) not to solicit a competing offer;
- (b) to recommend an offer to offeree company shareholders;
- (c) to notify the offeror if the director becomes aware of a potential competing offer;
- (d) to convene board meetings and/or vote in favour of board resolutions which are necessary to implement the offer;
- (e) to provide information in relation to the offeree company for due diligence or other purposes;
- (f) to assist the offeror with the satisfaction of its offer conditions;
- (g) to assist the offeror with the preparation of its offer documentation;  
and
- (h) to conduct the offeree company's business in a particular manner during the offer period.

2.3 The Executive regards commitments of the kind referred to in paragraph 2.2 above as extending beyond the relevant individual's decision to accept an offer (or to vote in favour of a scheme of arrangement). The Executive regards such commitments as having been entered into in the relevant individual's capacity as a director of the offeree company and, as such, to be in breach of Rule 21.2. This would be the case even if the commitments were stated to be subject to the relevant director's fiduciary or statutory duties.

2.4 The Executive does, however, interpret Rule 21.2(b)(iv) to permit the inclusion in an irrevocable commitment or letter of intent of provisions which are designed solely to give effect to a commitment to accept the offer (or to vote in favour of the scheme of arrangement). Such permitted provisions may include, for example:

- (a) an undertaking not to dispose of the shares or withdraw an acceptance of the offer;
- (b) an undertaking to elect for a particular form of consideration when alternative forms of consideration are offered; and
- (c) representations regarding title to the shares to which the commitment relates.

**PRACTICE STATEMENT NO 27 CONTINUED****3. Consulting the Executive**

- 3.1 The Executive should be consulted at the earliest opportunity in all cases where there is any doubt as to whether a proposed irrevocable commitment or letter of intent is in compliance with Rule 21.2.

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**17 January 2014**

## **PRACTICE STATEMENT NO 28**

### **RULES 2.8 AND 35.1 – ENTERING INTO TALKS DURING A RESTRICTED PERIOD**

#### **1. Introduction**

1.1 This Practice Statement explains the Panel Executive's practice with regard to consenting to a person who is subject to the restrictions set out in Rule 2.8 or Rule 35.1 making a single confidential approach to the board of the offeree company during the restricted periods of six months and 12 months respectively (each a "restricted period") in order to ascertain whether the board of the offeree company would be interested in entering into talks with regard to a possible offer. The Practice Statement also explains how the Executive applies the provisions of Rule 2.2, Rule 2.6, Rule 2.8 and Rule 35.1 if a potential offeror and the board of the offeree company enter into talks during a restricted period.

#### **2. Making a single confidential approach during a restricted period**

##### ***(a) Where a "no intention to bid" statement has been made under Rule 2.8***

2.1 Under Rule 2.8(e), except in the circumstances described in Note 2 on Rule 2.8 or otherwise with the consent of the Panel, a person who has made a "no intention to bid" statement (a "potential offeror") may not, within six months from the date of the statement, take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the potential offeror and its immediate advisers. The Executive considers that making an approach to the offeree company would fall within the restriction in Rule 2.8(e).

2.2 Paragraph (a) of Note 2 on Rule 2.8 provides that, save in certain specified circumstances, the restrictions in Rule 2.8 will no longer apply if the board of the offeree company so agrees. In order to give effect to this provision, the Executive will normally consent to a relaxation of the strict requirements of Rule 2.8(e) in order to enable a potential offeror or its adviser to make a single confidential approach (which may or may not include terms) to the board of the offeree company during the restricted period in order to ascertain whether the board would be interested in entering into talks with regard to a possible offer. This practice is consistent with the statement made by the Code Committee in paragraph 4.9.2 of RS 2004/1.

2.3 A potential offeror must consult the Executive in order to obtain its consent before making a single confidential approach to the board of the offeree company.

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- 2.4 If a single confidential approach is made but is rejected by the board of the offeree company, the potential offeror will not normally be permitted to make any further approach to the board of the offeree company for the remainder of the restricted period under Rule 2.8, in accordance with the restriction in Rule 2.8(e). Only the board of the offeree company will be permitted to initiate any further contact between the parties during the remainder of the restricted period.
- 2.5 If the board of the offeree company agrees to enter into talks with the potential offeror, the restrictions set out in Rule 2.8 will not apply for the period of time that such talks continue. If the offeree company or the potential offeror subsequently decide at any time to end those talks, the potential offeror will then be bound by the restrictions set out in Rule 2.8 (which will prohibit, amongst other things, any further approaches to the board of the offeree company) for the remainder of the restricted period.

***(b) Where the board of the offeree company is not permitted to set aside the restrictions set out in Rule 2.8***

- 2.6 The Executive will not consent to the potential offeror making a single confidential approach during the restricted period if the board of the offeree company is not permitted to disapply the restrictions under Rule 2.8 in accordance with paragraph (a) of Note 2 on Rule 2.8. Accordingly, where the “no intention to bid” statement is made after the announcement by a third party of a firm intention to make an offer, the potential offeror who made the “no intention to bid” statement will be permitted to make a single confidential approach to the board of the offeree company only if:
- (a) the third party offer has been withdrawn or has lapsed; and
  - (b) in the period following the making of the “no intention to bid” statement and prior to the third party offer being withdrawn or lapsing, neither the potential offeror who made the “no intention to bid” statement nor any person acting in concert with it acquired an interest in any shares in the offeree company.

***(c) Where a dispensation has been granted under Note 4 on Rule 2.2***

- 2.7 Where the Panel has granted a dispensation from the requirement to make an announcement under Note 4 on Rule 2.2, the potential offeror will be subject to the restrictions set out in Rule 2.8 for a period of six months. Under paragraph (a)(ii) of Note 4 on Rule 2.2, for the first three months of the restricted period the potential offeror will also not be permitted actively to consider making an offer for the offeree company, to approach the board of the offeree company or to acquire an interest in shares in the offeree company. The Executive will not normally consent

**PRACTICE STATEMENT NO 28 CONTINUED**

to these restrictions, or the restrictions set out in Rule 2.8, being set aside with the agreement of the board of the offeree company during the first three months of the restricted period. However, during the second three months of the restricted period, the restrictions set out in Rule 2.8, may be set aside with the agreement of the board of the offeree company (and the restrictions set out in paragraph (a)(ii) of Note 4 on Rule 2.2 will no longer apply). Accordingly, during the second three month period only, the Executive will normally consent to a potential offeror which has been granted a dispensation under Note 4 on Rule 2.2 making a single confidential approach to the board of the offeree company in accordance with the practice described above.

**3. Obligations to make announcements**

- 3.1 If, following a single confidential approach, the board of the offeree company agrees to enter into talks with the potential offeror, the provisions of Rule 2.2(c) will apply in the normal way.
- 3.2 If a possible offer announcement is made pursuant to Rule 2.2(c) before the expiry of the restricted period, the announcement will not normally be required to specify a “put up” or “shut up” deadline under Rule 2.6(a). This is because the Executive considers that the imposition of such a deadline would be unnecessary given that the board of the offeree company would be able to end the talks at any time during the restricted period and thereby re-impose the restrictions set out in Rule 2.8 upon the potential offeror for the remainder of the restricted period. The Executive would normally expect the announcement to explain why a “put up” or “shut up” deadline is not required to be specified and to state the date upon which the restricted period will end.
- 3.3 If an offer period commences and talks are continuing at the end of the restricted period, the Executive will require a “put up” or “shut up” deadline to be announced by the offeree company at that time. The deadline will be 5.00 pm on the 28th day following the end of the restricted period.
- 3.4 If, alternatively, talks are terminated following an announcement of a possible offer but before the end of the restricted period, the offeree company will be required to make an announcement of that fact. Such an announcement will end the offer period and the potential offeror will then be bound by the restrictions set out in Rule 2.8 for the remainder of the restricted period. The announcement will not, of itself, have the effect of extending the restricted period or commencing a new restricted period. However, if the potential offeror voluntarily makes a further “no intention to bid” statement, a new restricted period will commence from the date of that statement.

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3.5 Once a restricted period under Rule 2.8 has expired, Rules 2.2 and 2.6 will apply in the normal way to any obligation to make an announcement in relation to talks which may occur or continue after that date.

**4. Application to Rule 35.1**

4.1 Rule 35.1 imposes substantially similar restrictions to those set out in Rule 2.8 where an offeror has announced or made an offer but that offer has not become or been declared wholly unconditional and has been withdrawn or has lapsed. The restrictions set out in Rule 35.1 apply for a period of 12 months from the date on which the offer is withdrawn or lapses.

4.2 Similarly to Rule 2.8(e), Rule 35.1(e) provides that a former offeror may not take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the former offeror and its immediate advisers. In addition, paragraph (a)(i) of the Note on Rules 35.1 and 35.2 provides that, save in certain specified circumstances, the Panel will normally consent to setting aside the restrictions in Rule 35.1 if the board of the offeree company recommends the new offer.

4.3 The Executive will normally apply the same approach to Rule 35.1 as set out above in relation to Rule 2.8. Accordingly, the Executive will normally consent to a relaxation of the strict requirements of Rule 35.1(e) in order to enable a former offeror which is subject to the restrictions set out in Rule 35.1 to make a single confidential approach to the board of the offeree company during the 12 month period in order to ascertain whether the board would be interested in entering into talks with regard to a possible offer. The other points set out above in relation to Rule 2.8 (other than paragraphs 2.6 and 2.7) will apply equally in relation to Rule 35.1.

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**14 November 2014****Amended 1 January 2015**