

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2017/5

Statements of intention and related matters

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, Articles 2, 3 and 4 of the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009, and sections 340A, 340B and 340C of the Companies (Guernsey) Law, 2008, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

The Takeover Code is amended, with effect from 8 January 2018, in accordance with the Appendix to this instrument.

In the Appendix, underlining indicates new text and striking-through indicates deleted text.

Richard Murley
Chairman of the Code Committee
for and on behalf of the Code Committee

8 December 2017

APPENDIX

DEFINITIONS

Acting in concert

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NOTES ON ACTING IN CONCERT

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11. Indemnity and other dealing arrangements

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(b) ...

Such dealing arrangements must be disclosed as required by Note 2 on Rule 2.4, Rule 2.7(c)(~~viii~~ix), 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)(vii) and Rule 2.10.

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Dealings

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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~~ix), Notes 5 and 6 on Rule 8, Rule 24.13 and Rule 25.6.

Rule 2.7

2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

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

- (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) the intentions of the offeror with regard to the business, employees and pension scheme(s) of the offeree company (see Note 1);**
- (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;**
- (vi) 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;**
- (vii) 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 2.10);**
- (viii) 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);**
- (xi) a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2;**

(xii) 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; and

(xiii) a statement that the offeror will have the right to reduce the offer consideration by the amount of any dividend (or other distribution) which is paid or becomes payable by the offeree company to offeree company shareholders, unless, and to the extent that, the announcement provides that offeree company shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.

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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.~~

1. Intentions of the offeror with regard to the business, employees and pension scheme(s)

(a) For the purpose of Rule 2.7(c)(iv), the offeror must explain the long-term commercial justification for the offer and must state:

(i) its intentions with regard to the future business of the offeree company, including its intentions for any research and development functions of the offeree company;

(ii) 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 or in the balance of the skills and functions of the employees and management;

(iii) its strategic plans for the offeree company, and their likely repercussions on employment and on the locations of the offeree company's places of business, including on the location of the offeree company's headquarters and headquarters functions;

(iv) 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;

(v) its intentions with regard to any redeployment of the fixed assets of the offeree company; and

(vi) 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) above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business, it must make a statement to that effect.

(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)(ii) and (iii) with regard to itself.

Rule 2.10

2.10 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

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NOTES ON RULE 2.10

1. Disclosure in firm offer announcement

Where the details required to be announced under Note 3 on Rule 2.10 are, pursuant to Rule 2.7(c)(vii), 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 announcement is required under Rule 2.10(a) or (b).

Rule 8

RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS

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NOTES ON RULE 8

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14. Irrevocable commitments and letters of intent

See Rule 2.7(c)(vii) and Rule 2.10.

Rule 19.5

19.5 POST-OFFER UNDERTAKINGS

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(h) A party to an offer which has made a post-offer undertaking must submit written reports to the Panel after the end of the offer period at such intervals (of not more than 12 months) and in such form as the Panel may require. Such reports must, as appropriate:

- (i)** indicate whether any course of action that the party has committed to take has been implemented or completed within the specified period of time and, if not, the progress made to date and the steps being taken to implement or complete the course of action and the expected timetable for completion;
- (ii)** confirm that any course of action that the party has committed not to take has not been taken;
- (iii)** include such other documents or information as the Panel may require; and
- (iv)** ~~if so required by the Panel,~~ be published, in whole or in part (as required by the Panel), in accordance with the requirements of Rule 30.1.

Rule 19.6

19.6 POST-OFFER INTENTION STATEMENTS

(a) Any post-offer intention statement made by a party to an offer must be:

- (i)** an accurate statement of that party's intention at the time that it is made; and
- (ii)** made on reasonable grounds.

(b) If a party to an offer has made a post-offer intention statement and, during the period of 12 months from the date on which the offer period ended, or such other period of time as was specified in the statement, that party decides either:

- (i)** to take a course of action different from its stated intentions; or
- (ii)** not to take a course of action which it had stated it intended to take,

it must consult the Panel. Except with the consent of the Panel, if such a course of action is then taken or not taken (as appropriate), the party

must promptly make an announcement describing the course of action it has taken, or not taken, and explaining its reasons for taking, or not taking, that course of action (as appropriate).

(c) A party to an offer which has made a post-offer intention statement must, at the end of the period of 12 months from the date on which the offer period ended, or such other period of time as was specified in the statement:

(i) confirm in writing to the Panel whether it has taken, or not taken, the course of action it stated in the post-offer intention statement that it intended to take, or not to take; and

(ii) publish that confirmation in accordance with the requirements of Rule 30.1.

Rule 24.1

24.1 THE OFFER DOCUMENT

(a) Except with the consent of the Panel, 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 30.2 and must make the document readily available to the trustees of the offeree company's pension scheme(s). However, the offeror may only publish an offer document within the 14 days following the announcement of its firm intention to make an offer with the consent of the board of the offeree company.

(b) At the same time as the offer document is published,;

(i) 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); and. The Panel must be consulted if the offer document is not to be published within this period.

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

(bc) Promptly following its publication, the offeror must:

(i) publish the offer document on a website; and

(ii) announce that the offer document has been so published.

Rule 24.2

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

(a) In the offer document, the offeror must explain the long-term commercial justification for the offer and must state:

(i) its intentions with regard to the future business of the offeree company, including its intentions for any research and development functions of the offeree company;

(ii) 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 or in the balance of the skills and functions of the employees and management;

(iii) its strategic plans for the offeree company, and their likely repercussions on employment and on the locations of the offeree company's places of business, including on the location of the offeree company's headquarters and headquarters functions;

(iv) 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;

(v) its intentions with regard to any redeployment of the fixed assets of the offeree company; and

(vi) 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)(ii) to (v) above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business, it must make a statement to that effect.

Rule 25.1

25.1 THE OFFEREE BOARD CIRCULAR

(a) Except with the consent of the Panel, ~~t~~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 30.2 ~~and must make the document readily available to the trustees of its pension scheme(s).~~

(b) At the same time as the offeree board circular is published, the offeree company must make the circular readily available to its employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of its pension scheme(s).

(bc) Promptly following its publication, the offeree company must:

- (i)** publish the offeree board circular on a website; and
- (ii)** announce that the offeree board circular has been so published.

Rule 25.9

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

(a) Where the board of the offeree company receives in good time before publication of its circular on the offer:

- (ai)** an opinion from employee representatives on the effects of the offer on employment; or
- (bii)** 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.

(b) 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.

Rule 26.2

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 promptly following the publication of the announcement of a firm intention to make an offer (or, if later, the date of the relevant document) and in any event by no later than 12 noon on the following business day:

...

(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)).