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THE TAKEOVER PANEL

ASSET VALUATIONS

RESPONSE STATEMENT BY THE CODE COMMITTEE



CONTENTS

	Page
1. Introduction and summary	1
2. Valuations to which Rule 29 applies	5
3. Types of assets to which Rule 29 applies	10
4. Net asset values and adjusted net asset values	12
5. Requirement for a valuation report	13
6. The valuer	15
7. The valuation report	17
8. No material difference statement	20
9. Other proposals and consequential amendments	23
APPENDIX A Respondents to PCP 2018/1	27
APPENDIX B Amendments to the Code	28
Part 1: New Rule 29	
Part 2: Other amendments to the Code	

1. Introduction and summary

(a) Background

1.1 On 17 October 2018, the Code Committee of the Takeover Panel (the “**Code Committee**”) published a public consultation paper¹ (“**PCP 2018/1**” or the “**PCP**”) which proposed amendments to Rule 29 of the Takeover Code (the “**Code**”) in relation to asset valuations, as summarised below.

(b) Summary of proposals

(i) Valuations to which Rule 29 applies

1.2 Section 2 of the PCP proposed that Rule 29 should apply to an asset valuation published by the offeree company or a securities exchange offeror:

- (a) during the offer period;
- (b) in the 12 months prior to the commencement of the offer period; or
- (c) more than 12 months prior to the commencement of the offer period, but only if attention is drawn to that valuation by the offeree company or the securities exchange offeror (as applicable) in the context of the offer,

unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer.

(ii) Types of asset to which Rule 29 applies

1.3 Section 3 of the PCP identified that Rule 29 has principally been applied to valuations of:

- (a) land, buildings, plant or equipment;
- (b) mineral, oil or gas reserves; and
- (c) unquoted investments,

and proposed that this should be codified. It was also proposed that Rule 29 should continue to be capable of being applied to valuations of other types of assets, in addition to those set out above and, in certain cases, to valuations of liabilities.

¹ <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2018/10/PCP2018-1.pdf>

(iii) *Net asset values and adjusted net asset values*

1.4 Section 4 of the PCP proposed that, if an offeree company or a securities exchange offeror publishes, or has published, a net asset value figure or an adjusted net asset value figure in circumstances where Rule 29 would apply if a valuation was published in respect of the underlying assets, a valuation of those underlying assets must be published. That valuation would then be subject to the requirements of Rule 29.

(iv) *Requirement for a valuation report*

1.5 Section 5 of the PCP proposed that:

- (a) a valuation published during an offer period must be in the form of, or accompanied by, a valuation report; and
- (b) a valuation published before the commencement of an offer period must be confirmed in, or updated by, a valuation report.

(v) *The valuer*

1.6 Section 6 of the PCP proposed the requirements that a valuer appointed under Rule 29 must satisfy.

(vi) *The valuation report*

1.7 Section 7 of the PCP proposed the content requirements for a valuation report prepared in accordance with Rule 29.

(vii) *No material difference statement*

1.8 Section 8 of the PCP proposed that, if the date at which assets were valued is not the same as the date of the document or announcement in which the valuation report is published either:

- (a) the document or announcement must include a statement by the directors of the offeree company or the securities exchange offeror that the valuer has confirmed that an updated valuation would not be materially different; or
- (b) if such a statement cannot be made, that an updated valuation must be published.

(viii) *Other proposals and consequential amendments*

1.9 Section 9 of the PCP proposed:

- (a) that the current requirement for a statement as to the tax consequences of a sale of assets should be retained. In addition, it was proposed to clarify that an estimate of the amount of the tax liability which would arise from a sale of the assets should be given, unless the Panel consents otherwise;
- (b) the introduction of a new requirement to consult the Panel in advance if the publication of information contained in a valuation report could constitute a profit forecast;
- (c) that the existing rule that a party to an offer is not normally permitted to publish a valuation of the assets of another party unless supported by an unqualified valuation report should be retained (with some minor amendments); and
- (d) consequential amendments to Rule 23.2 (*Consent to inclusion of advice, opinions and reports*), Rule 26.3 (*Documents to be published on a website following the making of an offer*) and Rule 27.2 (*Subsequent documents*).

(c) ***Responses to the consultation***

1.10 The consultation period in relation to PCP 2018/1 ended on 7 December 2018. Responses were received from nine respondents, as listed in **Appendix A**. The responses have been published on the Panel's website at www.thetakeoverpanel.org.uk. The Code Committee thanks the respondents for their comments.

1.11 Respondents were generally supportive of the proposals. The principal comments and suggestions made by respondents are summarised in Sections 2 to 9 of this Response Statement.

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

1.12 Having considered the responses to the consultation, the Code Committee has adopted the amendments proposed in the PCP, subject to certain modifications, as described in Sections 2 to 9 below.

1.13 The Code Committee believes that the new Rule 29 will be a proportionate means of ensuring that asset valuations made in the course of an offer are supported by a valuation report and that the amendments will be beneficial to all parties to offers, their advisers, shareholders and other market participants and practitioners.

(e) Code amendments

1.14 The amendments to the Code adopted in this Response Statement are set out in **Appendix B**, as follows:

- (a) **Part 1** of Appendix B sets out the new Rule 29, which will replace the current Rule 29; and
- (b) **Part 2** of Appendix B sets out the amendments to other provisions of the Code. In Part 2 of Appendix B, underlining indicates new text and striking-through indicates deleted text, as compared with the current provisions of the Code.

1.15 Where new or amended provisions of the Code are set out in the main body of this Response Statement, they are marked to show changes from the provisions as they were proposed to be amended in the PCP.

(f) Implementation and transition

- 1.16 The amendments to the Code introduced as a result of this Response Statement will take effect on Monday, 1 April 2019 (the “**implementation date**”).
- 1.17 The Code, as amended, will be applied from the implementation date to all companies and transactions to which it relates, including those on-going transactions which straddle that date, except where to do so would give the amendments retroactive effect.
- 1.18 Where parties have doubts as to the consequences of any of the rule changes, in particular the impact on any transaction which is in existence or contemplation, they should consult the Panel prior to the implementation date to obtain a ruling or guidance.

2. Valuations to which Rule 29 applies

Q1	Is a period of 12 months prior to the commencement of the offer period an appropriate “look back” period in order for Rule 29 to apply to a valuation under the proposed Rule 29.1(a)(ii)?
Q2	Do you have any comments on the application of Rule 29 to a valuation published in the circumstances described in the proposed Rule 29.1(a)(i), (ii) or (iii)?
Q3	Do you have any comments on the proposed wording “unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer”?
Q4	Do you have any other comments on the proposed new NB at the beginning of Rule 29, the proposed Rule 29.1(a) or the proposed new Note on Rule 29.1?

(a) Summary of proposals

2.1 Section 2 of the PCP proposed the introduction of a new Rule 29.1(a) to clarify the circumstances in which a valuation may be subject to the requirements of Rule 29. It was proposed that Rule 29 should apply to an asset valuation published by the offeree company or a securities exchange offeror:

- (a) during the offer period;
- (b) in the 12 months prior to the commencement of the offer period; or
- (c) more than 12 months prior to the commencement of the offer period (referred to in the PCP and this Response Statement as a “**historical valuation**”), but only if attention is drawn to that valuation by the offeree company or the securities exchange offeror (as applicable) in the context of the offer,

unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer.

2.2 In addition, Section 2 of the PCP proposed the introduction of:

- (a) a new NB at the beginning of Rule 29, to make clear that Rule 29 does not apply to an asset valuation published by a cash offeror in respect of its own assets; and
- (b) a new Note on Rule 29.1, to make clear that Rule 29.1 is not intended to apply to a valuation set out in a company’s financial statements only as a result of accounting practice and which is not otherwise referred to by the relevant party in the arguments as to the merits or demerits of the offer.

2.3 Respondents were generally supportive of the proposals.

(b) Respondents' comments and the Code Committee's response

(i) 12 month "look back" period

2.4 All but one of the respondents agreed that 12 months was an appropriate "look back" period in order for Rule 29 to apply to a valuation under the proposed Rule 29.1(a)(ii).

2.5 One respondent considered that six months would be a more appropriate "look back" period, on the basis that valuations which were 12 months old would be likely to be out of date.

2.6 One respondent, noting the proposed application of Rule 29 to a valuation "**unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer**", sought guidance as to the types of valuations which the Panel would consider to be material for this purpose.

2.7 The Code Committee continues to believe that a period of 12 months is an appropriate "look back" period. This is on the basis that:

- (a) if a valuation published in the 12 months prior to the commencement of the offer period is the most recent extant valuation, and is considered by the Panel to be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer, the valuation should be reported on under Rule 29;
- (b) if the valuer cannot confirm that an updated valuation would not be materially different, the valuation should be updated (see Section 8 below); and
- (c) if the Panel considers that the valuation is not material to offeree company shareholders, Rule 29 will not apply.

2.8 The question of whether the Panel considers a valuation to be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of an offer will depend on the particular circumstances. Advisers should therefore consult the Panel on a case by case basis.

(ii) Conflicts of interest

2.9 Two respondents noted that applying Rule 29 to a valuation published before the beginning of an offer period could give rise to practical difficulties in relation to valuer independence. A valuation published before the beginning of the offer period which becomes subject to the requirements of Rule 29 will have to be confirmed in, or updated by, a valuation report. The respondents noted that, if the original valuer had also provided

valuation advice to another party to the offer before the offer period, the original valuer may then have a conflict of interest and be unable to confirm or update the original valuation as required by Rule 29.

- 2.10 The Code Committee notes that the valuer who confirms or updates a valuation for the purposes of Rule 29 does not have to be the same as the valuer who gave the original valuation. If, for example, the original valuer has a conflict of interest, then the offeree company or securities exchange offeror (as appropriate) will need to instruct a different valuer to update or confirm the original valuation.

(iii) *“Ordinary course” valuations*

- 2.11 One respondent considered that the Panel should have the ability to disapply certain requirements of Rule 29 in the case of an “ordinary course” asset valuation, similar to the way that the Panel is able to disapply certain requirements of Rule 28 in the case of an “ordinary course” profit forecast (i.e. 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). Under Note 2 on Rule 28.1, if the requirements for reports are disapplied in the case of an ordinary course profit forecast, the document or announcement which contains the ordinary course profit forecast must include confirmations from the directors that the forecast remains valid, has been properly compiled on the basis of the assumptions stated, and that the basis of accounting used is consistent with the company’s accounting policies.

- 2.12 As stated in the PCP, the Code Committee does not consider that it would be appropriate to provide for a potential disapplication of the requirement for a valuation report in relation to an ordinary course asset valuation to which Rule 29.1 would otherwise apply. This is on the basis that an asset valuation, even if given in the ordinary course of the relevant party’s communications with its shareholders and the market:

- (a) is likely to be a fundamental reference point for offeree company shareholders in assessing an offer. For asset-based companies in particular, the most recently published valuation, even if “ordinary course”, is likely to be of such importance that it should be subject to Rule 29.1 and must be confirmed (or updated) by an independent valuation report;
- (b) will not usually be capable of comparison with an actual out-turn (unlike a profit forecast, where the company will be required to publish audited financial statements at the end of the relevant period); and

- (c) in practice, is often given only after the directors of the company have sought an opinion from a valuer, in which case it would not be appropriate for the directors to confirm that the valuation remains valid without seeking an updated valuer's opinion. By contrast, the Code Committee understands that the directors of a company will often publish an ordinary course profit forecast without seeking an opinion from the company's accountants.

2.13 The provisions of the Code which relate to "ordinary course" profit forecasts were introduced in response to a change in market practice. It had become increasingly common for companies to publish forward-looking information which would constitute a profit forecast as part of their normal communication with shareholders and market. The Code Committee was concerned that the requirements of the Code may have deterred companies from publishing forward-looking guidance on future expected profits, even when there was no reason to believe that an offer was in contemplation. In contrast, there has been no such change in practice in relation to asset valuations, which continue to be subject to a formal reporting structure.

2.14 In the light of the above, the Code Committee continues to believe that it would not be appropriate to provide the Panel with an ability to disapply certain requirements of Rule 29 in relation to an "ordinary course" asset valuation to which Rule 29.1 would otherwise apply.

(c) Code amendments

2.15 The new NB at the beginning of Rule 29 has been adopted as proposed in Section 2 of the PCP, as follows:

"NB The requirements of Rule 29 do not apply to a valuation published by a cash offeror in respect of assets of that cash offeror."

2.16 The new Rule 29.1(a) has been adopted as proposed in Section 2 of the PCP, as follows:

"29.1 APPLICABLE VALUATIONS

(a) Rule 29 applies to a valuation published by the offeree company or a securities exchange offeror:

(i) during the offer period;

(ii) in the 12 months prior to the commencement of the offer period; or

(iii) more than 12 months prior to the commencement of the offer period if attention is drawn to the valuation in the context of the offer by the offeree company or a securities exchange offeror (as applicable),

unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer.”.

- 2.17 The new Note on Rule 29.1 has been adopted as proposed in Section 2 of the PCP, as follows:

“NOTE ON RULE 29.1

Valuations solely in financial statements

Rule 29.1 is not intended to apply to a valuation which is set out in a company's financial statements only as a result of accounting practice and which is not otherwise referred to by the relevant party in the arguments as to the merits or demerits of the offer.”.

3. Types of asset to which Rule 29 applies

Q5	Should the specific types of asset valuations to which Rule 29 applies be those referred to in the proposed Rule 29.1(b)?
Q6	Should the Panel have the ability to apply Rule 29 to a valuation of other assets or liabilities, as referred to in the proposed Rule 29.1(c)?
Q7	Do you have any comments on the proposed Rules 29.1(b) and (c)?

(a) Summary of proposals

3.1 Section 3 of the PCP identified that Rule 29 has principally been applied to valuations of:

- (a) land, buildings, plant or equipment;
- (b) mineral, oil or gas reserves; and
- (c) unquoted investments,

and proposed that this should be codified in the new Rule 29.1(b).

3.2 In relation to unquoted investments, it was proposed that Rule 29 should apply to:

“a valuation of unquoted investments representing in aggregate 10% or more of the gross asset value of an investment company.”

3.3 In addition, it was proposed that the new Rule 29.1(c) should provide that Rule 29 would be capable of being applied to valuations of other types of assets in addition to those set out in paragraph 3.1 above and, in certain cases, to valuations of liabilities.

3.4 Respondents were generally supportive of the proposals.

(b) Respondents' comments and the Code Committee's response

3.5 One respondent queried why Rule 29 should apply only to valuations of unquoted investments held by an investment company and not to unquoted investments held by any company. In addition, the respondent considered that the proposed threshold of 10% of gross asset value for the application of Rule 29 to unquoted investments was too low and that Rule 29 should apply only where unquoted investments represented 30% or more of the gross asset value of the company concerned.

3.6 One respondent considered that Rule 29.1(b) should expressly refer to valuations of income streams and annuities. Two respondents considered that it should expressly refer to valuations of intangible assets.

3.7 The Code Committee agrees that Rule 29 should apply to a valuation of unquoted investments held by any company (and not only an investment company) if the Panel considers that the valuation is material to the investment decision of an offeree company shareholder. It does not, however, consider that the proposed threshold of 10% of a company's gross assets is too low and understands that this is the level at which Rule 29 has historically been applied in practice to valuations of unquoted investments.

3.8 As stated in the PCP, the Code Committee does not consider it desirable to list in Rule 29 all asset types to which it could be applied and considers that it is appropriate to refer specifically only to the assets to which Rule 29 has primarily been applied in practice. Valuations of other assets are not excluded from Rule 29 and could fall within the new Rule 29.1(c). The Code Committee notes, however, that valuations of income streams, annuities and intangible assets are not generally published in the context of an offer and does not consider it appropriate to refer to them specifically in Rule 29. Whether Rule 29 will apply to a valuation of assets will depend on whether the valuation is considered by the Panel to be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer (which will depend on factors including the nature of the company which publishes the valuation), rather than on the category of assets to which the valuation relates.

(c) Code amendments

3.9 The new Rule 29.1(b) has been adopted in a slightly amended form to that proposed in Section 3 of the PCP, as follows:

“(b) Rule 29 applies to a valuation of:

(i) land, buildings, plant or equipment;

(ii) mineral, oil or gas reserves; and

(iii) unquoted investments representing in aggregate 10% or more of the gross asset value of ~~an investment company~~ the party to the offer which published the valuation.”

3.10 The new Rule 29.1(c) has been adopted as proposed in Section 3 of the PCP, as follows:

“(c) The Panel may also apply Rule 29 to a valuation of other assets or, if appropriate, liabilities falling within Rule 29.1(a). The Panel should be consulted at the earliest opportunity if such a valuation has been or is proposed to be published.”

4. Net asset values and adjusted net asset values

Q8	Do you have any comments on the proposed Rule 29.1(d) in relation to the publication of a net asset value or adjusted net asset value?
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(a) Summary of proposals

4.1 Section 4 of the PCP proposed that the new Rule 29.1(d) should require that, if an offeree company or a securities exchange offeror publishes, or has published, a net asset value figure or an adjusted net asset value figure in circumstances where Rule 29 would apply if a valuation had been published in respect of the underlying assets, a valuation of those underlying assets must be published. That valuation would then be subject to the requirements of Rule 29.

(b) Respondents' comments and the Code Committee's response

4.2 All of the respondents supported the proposals.

4.3 One respondent suggested a drafting improvement to the proposed Rule 29.1(d).

4.4 The Code Committee has accepted the suggested drafting improvement.

(c) Code amendments

4.5 The new Rule 29.1(d) has been adopted in a slightly amended form to that proposed in Section 4 of the PCP, as follows:

“(d) If the offeree company or a securities exchange offeror publishes, or has published, a net asset value or an adjusted net asset value in circumstances where Rule 29.1(a) would apply if a valuation had been published in respect of the underlying assets:

(i) a valuation of the underlying assets falling within the scope of Rules 29.1(b) or (c) must be published; and

(ii) any document or announcement published by the offeree company or the securities exchange offeror which includes that net asset value or adjusted net asset value must clearly set out any adjustments which have been made to the valuation of the underlying assets in order to calculate that net asset value or adjusted net asset value.”.

5. Requirement for a valuation report

- Q9** Should the Code require that a valuation published during the offer period must be in the form of, or accompanied by, a valuation report?
- Q10** Should the Code require that a valuation report in respect of a valuation falling within the proposed Rule 29.1(a)(ii) or (iii) should be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation?
- Q11** Do you have any other comments on the proposed Rule 29.2, regarding the requirement for a valuation report, or on the proposed new Note on Rule 29.2, in relation to the circumstances where it is not possible to obtain a valuation report within the required timeframe?

(a) *Summary of proposals*

5.1 Section 5 of the PCP proposed that the new Rule 29.2 should provide that:

- (a) a valuation published during the offer period should be in the form of, or accompanied by, a valuation report; and
- (b) a valuation published before the commencement of the offer period must be confirmed in, or updated by, a valuation report, which should be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period which refers to the valuation.

5.2 Section 5 of the PCP also proposed the introduction of a new Note on Rule 29.2, which would allow the Panel to agree to a delay in the publication of the valuation report. Under the new Note, the Panel would only consent to a delay in publication of the valuation report beyond the date of the offer document or offeree board circular in “exceptional circumstances”.

5.3 Respondents were generally supportive of the proposals.

(b) *Respondents’ comments and the Code Committee’s response*

5.4 One respondent noted that valuation reports can take a considerable time to prepare, particularly where a portfolio of unquoted investments needs to be valued by a number of specialist valuers or where the valuers need to value assets from “first principles”. In view of this, the respondent suggested that the new Note on Rule 29.2 should allow the Panel to consent to a delay in the publication of a valuation report where it would be reasonable to do so, rather than only in exceptional circumstances.

- 5.5 The Code Committee continues to believe that, although it may be appropriate for the Panel to agree that a valuation report may be published in the offer document or offeree board circular (rather than in the first announcement or document which refers to the valuation or historical valuation), a delay beyond that date should be permitted only in exceptional circumstances.

(c) Code amendments

- 5.6 The new Rule 29.2 and the Note on Rule 29.2 have been adopted as proposed in Section 5 of the PCP, as follows:

“29.2 REQUIREMENT FOR VALUATION REPORT

(a) Except with the consent of the Panel, a valuation falling within Rule 29.1(a)(i) must be in the form of, or accompanied by, a valuation report.

(b) Except with the consent of the Panel, a valuation falling within Rule 29.1(a)(ii) or (iii) must be confirmed in, or updated by, a valuation report. The valuation report must be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation.

(c) Any valuation report must be prepared by a valuer who satisfies the requirements of Rule 29.3.

NOTE ON RULE 29.2

Where it is not possible to obtain a valuation report within the required timeframe

An offeree company or a securities exchange offeror which has published a valuation prior to the commencement of the offer period may not be able to obtain a valuation report within the timeframe set out in Rule 29.2(b). In such cases, the Panel may consent to a delay in the publication of a valuation report but will only consent to a delay beyond the date of the offer document or offeree board circular (as the case may be) in exceptional circumstances.”

6. The valuer

Q12 Do you have any comments on the proposed Rule 29.3 in relation to the requirements applying to valuers?

(a) *Summary of proposals*

6.1 Section 6 of the PCP proposed that the new Rule 29.3 should set out the requirements which a valuer appointed under Rule 29 must satisfy, i.e. that the valuer must:

- (a) be considered by the Panel to be independent of the parties to the offer;
- (b) be appropriately qualified to give a valuation report on the valuation;
- (c) satisfy any relevant legal or regulatory requirements; and
- (d) have sufficient current knowledge of each relevant market and the necessary skills and understanding to prepare the valuation report.

(b) *Respondents' comments and the Code Committee's response*

6.2 All of the respondents supported the proposals.

6.3 Two respondents queried what was meant by the proposed requirement for a valuer to satisfy "**any relevant legal or regulatory requirements**".

6.4 On reflection, the Code Committee considers that it is unnecessary to include a reference to the valuer satisfying "**any relevant legal or regulatory requirements**" in the new Rule 29.3, on the basis that this is included within the requirement for the valuer to be "**appropriately qualified to give a valuation report on the valuation**".

(c) *Code amendments*

6.5 The new Rule 29.3 has been adopted in a slightly amended form to that proposed in Section 6 of the PCP, as follows:

"29.3 THE VALUER

(a) A valuer must:

- (i) be considered by the Panel to be independent of the parties to the offer;**
- (ii) be appropriately qualified to give a valuation report on the valuation; and**
- (iii) ~~satisfy any relevant legal or regulatory requirements; and~~**

(iviii) have sufficient current knowledge of each relevant market and the necessary skills and understanding to prepare the valuation report.

(b) The Panel must be consulted in advance if there is any doubt as to whether a valuer satisfies the requirements of Rule 29.3(a)."

7. The valuation report

Q13 Do you have any comments on the proposed Rule 29.4 in relation to a valuation report?
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(a) Summary of proposals

7.1 Section 7 of the PCP proposed that the new Rule 29.4 should set out the content requirements for a valuation report prepared in accordance with Rule 29. The proposed requirements were as follows:

- (a) the name, business address and professional qualifications of the valuer;
- (b) the date as at which the assets were valued;
- (c) details of the assets or liabilities which are the subject of the valuation report;
- (d) separate valuations of each category of assets, and/or individual significant assets, consistent with any previously published valuations of those assets or liabilities or with normal valuation reporting practice for such assets or liabilities;
- (e) details of the valuation standards to which the valuation report has been prepared; and
- (f) the basis of valuation.

7.2 Four Notes on the new Rule 29.4 were also proposed.

(b) Respondents' comments and the Code Committee's response

7.3 All of the respondents supported the proposals.

7.4 One respondent noted that the proposed new Rule 29.4(b)(ii) provided that, except with the consent of the Panel, a valuation report must not be subject to special assumptions. However, the proposed Note 3 on Rule 29.4 required a valuation of development land to be given on the basis that the development has been completed and let, which would be a special assumption. The respondent proposed minor drafting changes to Rule 29.4(b) and Note 3 on Rule 29.4 to resolve this apparent conflict.

7.5 The Code Committee has accepted the drafting amendments proposed by the respondent.

7.6 The Code Committee has also made an amendment to Rule 29.4(b)(i) to give a further example of what is meant by "special assumptions".

(c) Code amendments

7.7 The new Rule 29.4, and the Notes on Rule 29.4, have been adopted as proposed in Section 7 of the PCP, save for the minor amendments to Rule 29.4(b) and Note 3 on Rule 29.4 referred to above, as follows:

“29.4 THE VALUATION REPORT**(a) A valuation report must include:**

- (i) the name, address and professional qualifications of the valuer;**
- (ii) the date as at which the assets were valued;**
- (iii) details of the assets which are the subject of the valuation report;**
- (iv) separate valuations of each category of assets, and/or individual significant assets, consistent with any previously published valuations of those assets or with normal valuation reporting practice for such assets;**
- (v) details of the valuation standards to which the valuation report has been prepared (see Note 1); and**
- (vi) the basis of valuation (see Note 2).**

(b) A valuation report must not be:

- (i) qualified; or**
- (ii) subject to special assumptions (e.g. an assumption that assumes where assumed facts that differ from the actual facts existing at the date of the valuation or which would not be made by a typical market participant in a transaction on the date of the valuation),**

except as required by Note 3(a), or otherwise with the consent of the Panel, in which case any qualifications or special assumptions must be fully explained.

(c) In preparing a valuation report in respect of a portfolio of assets, the valuer must normally value all of the assets in the portfolio. In the case of a portfolio with a large number of similar assets, the Panel may consent to the valuer valuing only a representative sample of the portfolio (see Note 4).

(d) Any valuation report must be published on a website in accordance with Rule 26.3.

NOTES ON RULE 29.4**1. Valuation standards**

A valuation report must be prepared in accordance with:

(a) valuation standards published by the Royal Institution of Chartered Surveyors or the International Valuation Standards Council; or

(b) other appropriate professional standards approved by the Panel,

and on a basis which is consistent with past practice in relation to the assets concerned.

2. Basis of valuation

The basis of valuation should normally be market value. See also Note 3.

3. Development land

In the case of land being developed or with immediate development potential, in addition to the market value of the land at the date of valuation, the valuation report must include:

(a) the value ~~after~~ on the assumption that the development has been completed and, if applicable, let;

(b) the estimated total cost, including carrying charges, of completing the development;

(c) the expected dates of completion and, if applicable, of letting or occupation; and

(d) a statement as to whether planning consent has been obtained and, if so, the date of the planning consent and any conditions attaching to the consent which may affect the value.

4. Representative sample of a portfolio of assets

The Panel will normally only grant its consent under Rule 29.4(c) where the valuer is familiar with the portfolio as a whole. In such cases:

(a) the valuer must report on the representative sample and certify the representative nature of the sample; and

(b) the directors must take sole responsibility for estimates, based on the sample, to cover the remaining properties. The directors' estimates and a comparison of the estimates with book values must be included in any document or announcement in which the valuation report on the representative sample is published."

8. No material difference statement

Q14 Do you have any comments on the proposed Rule 29.5 in relation to “no material difference” statements?

(a) *Summary of proposals*

8.1 Section 8 of the PCP proposed that the new Rule 29.5 should require that, if the date as at which the assets were valued was not the date of the document or announcement in which the valuation report is published:

- (a) the document or announcement must include a statement by the directors (a “**no material difference statement**”) that the valuer has confirmed to the directors that an updated valuation would not be materially different; or
- (b) if a no material difference statement cannot be made, that an updated valuation must be published.

8.2 It was also proposed that the confirmation by the valuer to the directors that an updated valuation would not be materially different (the “**valuer’s confirmation**”) should be required to be published on a website under the amended Rule 26.3(f)(iii).

8.3 Six of the nine respondents were in favour of the proposals and three respondents raised concerns.

(b) *Respondents’ comments and the Code Committee’s response*

(i) *Publication of valuer’s confirmation*

8.4 Of the six respondents who were in favour of the proposals, one proposed that the valuer’s confirmation should be published not only on a website but also in the relevant document or announcement.

8.5 The Code Committee notes that, following the amendments to Rule 26.3(f) adopted in this Response Statement, the valuer’s confirmation will be required to be published on a website. This is consistent with the current requirement under Rule 26.3(f), which provides that, where an asset valuation has been published, the confirmation by the valuer that its report continues to apply must be published on a website. There is currently no separate requirement for the confirmation to be published in the relevant document or announcement and the Code Committee does not consider that it would be appropriate to introduce a new requirement to this effect.

(ii) *Requirement to confirm valuation*

8.6 One respondent highlighted the additional costs that a requirement to procure a valuer's confirmation could impose on the offeree company or securities exchange offeror. This was on the basis that a new valuation, or material additional confirmatory valuation work, might have to be carried out. Another respondent questioned whether it would be practicable for a company to make a no material difference statement without a new valuation process being completed.

8.7 The Code Committee notes that, under the current Rule 29.4, if a valuation is not current, the valuer must state that a current valuation would not be materially different, and that, if that statement cannot be made, the valuation must be updated. Whether or not a new valuation or material additional confirmatory valuation work is required, both under the current Rule 29.4 and the new Rule 29.5, will depend on matters such as the nature of the assets and the extent of any changes to the assets and market conditions since the date of the valuation.

(iii) *Confirmation by valuer or directors?*

8.8 One respondent considered that the directors, rather than the valuer, should be required to confirm that an updated valuation would not be materially different from the original valuation, noting that this would be in line with the requirement which applies when a property company issues a prospectus². In the alternative, the respondent proposed that, if the date as at which the relevant assets were valued was within a certain period (for example, three months) from the date of the announcement or document in which the valuation report is published, the directors should be allowed to make a no material difference statement without the need for a valuer's confirmation.

8.9 The Code Committee continues to believe that the directors should make the no material difference statement, but that the statement should be supported by a valuer's confirmation. It is the valuer who will have published the original valuation report and the valuer is therefore the appropriate person to confirm to the directors whether an updated valuation would be materially different. This is because, while the directors can be expected to confirm the continuing ownership and state of the assets, it is the valuer who provides an independent assessment of whether there has been a material change in market conditions and valuation rates.

8.10 The Code Committee notes that, under Rule 23.2, any document or announcement published in connection with the offer which includes a valuation report must include a

² See paragraph 130 of the ESMA update of the CESR recommendations: The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive: <https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-319.pdf>

statement that the valuer has given and not withdrawn its consent to the inclusion of its report in the relevant document, and that a valuer is unlikely to give that consent if an updated valuation could be materially different. The Code Committee does not believe that a requirement for the consent letter to include a valuer's confirmation would be materially more onerous than the requirement for the valuer to consent to the inclusion of its valuation report in the relevant document.

(c) Code amendments

8.11 The new Rule 29.5 has been adopted as proposed in Section 8 of the PCP, as follows:

"29.5 NO MATERIAL DIFFERENCE STATEMENT

(a) If the date as at which the assets were valued is not the same as the date of the document or announcement in which the valuation report is published, the document or announcement must include a statement by the directors of the offeree company or the securities exchange offeror that the valuer has confirmed that an updated valuation would not be materially different.

(b) If such a statement cannot be made, the offeree company or the securities exchange offeror (as the case may be) must publish an updated valuation."

9. Other proposals and consequential amendments

- Q15** Do you have any comments on the proposed Rule 29.6 in relation to the requirement to give an estimate of the amount of the potential tax liability which would arise upon a sale of the assets?
- Q16** Do you have any comments on the proposed Rule 29.7 in relation to information in valuation reports which could constitute a profit forecast?
- Q17** Do you have any comments on the proposed Rule 29.8 in relation to the valuation by one party to an offer of another party's assets?
- Q18** Do you have any comments on the consequential amendments to the Code proposed in Section 9(d) of the PCP?

(a) *Potential tax liability*

(i) *Summary of proposals*

9.1 Section 9(a) of the PCP proposed that the current requirement in Rule 29.3 for a statement as to the tax consequences of a sale of valued assets should be retained in the new Rule 29.6.

9.2 It was also proposed to clarify in the new Rule 29.6 that an estimate of the amount of the tax liability which would arise from a sale of the assets should be given, unless the Panel consents otherwise. In such cases, it was proposed that an explanation must be provided as to:

- (a) why a meaningful estimate cannot be given; and
- (b) the tax consequences of a sale of the assets.

(ii) *Respondents' comments*

9.3 Respondents either supported the proposal or made no comments on it.

(iii) *Code amendments*

9.4 The Code Committee has made minor drafting amendments to the new Rule 29.6 to clarify that where an estimate of the tax liability cannot be given, the announcement or document must:

- (a) explain why an estimate cannot be given; and
- (b) describe (i.e. in qualitative rather than quantitative terms) the tax consequences of a sale of the assets.

- 9.5 The new Rule 29.6 has been adopted as proposed in Section 9(a) of the PCP, save for the minor drafting amendments referred to above, as follows:

“29.6 POTENTIAL TAX LIABILITY

(a) Except with the consent of the Panel, any document or announcement in which a valuation report is published must (if it is not already included in the valuation report) include an estimate by the directors of the offeree company or the securities exchange offeror of the amount of any potential tax liability which would arise if the assets were to be sold at the amount of the valuation and a comment as to the likelihood of any such liability crystallizing.

(b) Where the Panel has given its consent under Rule 29.6(a), the document or announcement must ~~contain an explanation as to:~~

(i) explain why an meaningful estimate cannot be given; and

(ii) describe ~~as to~~ the tax consequences of a sale of the assets.”.

(b) Profit forecasts

(i) Summary of proposals

- 9.6 Section 9(b) of the PCP proposed to introduce as the new Rule 29.7 a requirement to consult the Panel in advance if the publication of information contained in a valuation report could constitute a profit forecast.

(ii) Respondents' comments

- 9.7 Respondents either supported the proposal or made no comments on it.

(iii) Code amendments

- 9.8 The new Rule 29.7 has been adopted as proposed in Section 9(b) of the PCP, as follows:

“29.7 PROFIT FORECASTS

If the publication of information contained in a valuation report could constitute a profit forecast, the Panel must be consulted in advance.”.

(c) Valuation of another party's assets

(i) Summary of proposals

- 9.9 Section 9(c) of the PCP proposed that the existing provision in Rule 29.1(d) that a party to an offer is not normally permitted to publish a valuation of the assets of another party, unless supported by an unqualified valuation report, should be retained, with some minor amendments, as the new Rule 29.8.

(ii) *Respondents' comments*

9.10 Respondents either supported the proposal or made no comments on it.

(iii) *Code amendments*

9.11 The new Rule 29.8 has been adopted as proposed in Section 9(c) of the PCP, as follows:

"29.8 VALUATION OF ANOTHER PARTY'S ASSETS

A party to an offer will not normally be permitted to publish a valuation of assets of another party to an offer unless the valuation is the subject of an unqualified valuation report prepared in accordance with the requirements of this Rule 29 by a valuer who has had access to sufficient information to prepare such a report."

(d) ***Consequential and minor amendments***

(i) *Summary of proposals*

9.12 Section 9(d) of the PCP proposed consequential amendments to Rule 23.2 (*Consent to inclusion of advice, opinions and reports*), Rule 26.3 (*Documents to be published on a website following the making of an offer*) and Rule 27.2(d) (*Subsequent documents*).

(ii) *Respondents' comments and the Code Committee's response*

9.13 Eight respondents either supported the proposals or made no comments. One respondent noted that the consequential amendments referred to in paragraph 9.12 may require a valuation to be brought up to date, by contrast with the current requirement to confirm that a previously published valuation report continues to apply.

9.14 The Code Committee notes that, under the current Rule 27.2(d)(iii), if a document or announcement includes an asset valuation, any document subsequently published by the relevant party in connection with the offer must, unless superseded by information included in the new document, include a statement that the valuer has confirmed that its opinion continues to apply. Accordingly, when a subsequent document is published, the current Rule 27.2(d)(iii) already requires a valuation to be reviewed in order to determine whether an updated valuation would be materially different. Whether or not a new valuation will be required, both under the current Rule 27.2(d)(iii) and the amended Rule 27.2(d)(iii), will depend on matters such as the nature of the assets and the extent of any changes to the assets and market conditions since the date of the valuation.

(iii) *Code amendments*

9.15 The amendments to Rules 23.2, 26.3(f) and 27.2(d) have been adopted as proposed in Section 9(d) of the PCP, as set out in Part 2 of Appendix B.

- 9.16 The Code Committee has also taken the opportunity to make a minor amendment to Note 3(a) on Rule 8 (*Method of disclosure*), as set out in Part 2 of Appendix B, to reflect the fact that it no longer considers it appropriate for disclosures to be made to a RIS by fax.

APPENDIX A**Respondents to PCP 2018/1**

1. Association of Investment Companies
2. Institute of Chartered Accountants in England and Wales
3. Institute of Chartered Secretaries and Administrators
4. Joint Working Party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales
5. PricewaterhouseCoopers LLP
6. Quoted Companies Alliance
7. Royal Institution of Chartered Surveyors
8. Strand Hanson
9. Valuology Ltd

APPENDIX B

Part 1: New Rule 29³

RULE 29

NB The requirements of Rule 29 do not apply to a valuation published by a cash offeror in respect of assets of that cash offeror.

29.1 APPLICABLE VALUATIONS

(a) Rule 29 applies to a valuation published by the offeree company or a securities exchange offeror:

- (i) during the offer period;**
- (ii) in the 12 months prior to the commencement of the offer period; or**
- (iii) more than 12 months prior to the commencement of the offer period if attention is drawn to the valuation in the context of the offer by the offeree company or a securities exchange offeror (as applicable),**

unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer.

(b) Rule 29 applies to a valuation of:

- (i) land, buildings, plant or equipment;**
- (ii) mineral, oil or gas reserves; and**
- (iii) unquoted investments representing in aggregate 10% or more of the gross asset value of the party to the offer which published the valuation.**

(c) The Panel may also apply Rule 29 to a valuation of other assets or, if appropriate, liabilities falling within Rule 29.1(a). The Panel should be consulted at the earliest opportunity if such a valuation has been or is proposed to be published.

(d) If the offeree company or a securities exchange offeror publishes, or has published, a net asset value or an adjusted net asset value in circumstances where Rule 29.1(a) would apply if a valuation had been published in respect of the underlying assets:

- (i) a valuation of the underlying assets falling within the scope of Rules 29.1(b) or (c) must be published; and**
- (ii) any document or announcement published by the offeree company or the securities exchange offeror which includes that net asset value or adjusted net asset value must clearly set out any adjustments which have been made to the valuation of the underlying assets in order to calculate that net asset value or adjusted net asset value.**

³ The current Rule 29 will be deleted in its entirety and replaced with the new Rule 29 as set out in this Part 1 of Appendix B. Accordingly, the provisions of the new Rule 29 are not "marked up" against the current Rule 29.

NOTE ON RULE 29.1***Valuations solely in financial statements***

Rule 29.1 is not intended to apply to a valuation which is set out in a company's financial statements only as a result of accounting practice and which is not otherwise referred to by the relevant party in the arguments as to the merits or demerits of the offer.

29.2 REQUIREMENT FOR VALUATION REPORT

(a) Except with the consent of the Panel, a valuation falling within Rule 29.1(a)(i) must be in the form of, or accompanied by, a valuation report.

(b) Except with the consent of the Panel, a valuation falling within Rule 29.1(a)(ii) or (iii) must be confirmed in, or updated by, a valuation report. The valuation report must be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation.

(c) Any valuation report must be prepared by a valuer who satisfies the requirements of Rule 29.3.

NOTE ON RULE 29.2***Where it is not possible to obtain a valuation report within the required timeframe***

An offeree company or a securities exchange offeror which has published a valuation prior to the commencement of the offer period may not be able to obtain a valuation report within the timeframe set out in Rule 29.2(b). In such cases, the Panel may consent to a delay in the publication of a valuation report but will only consent to a delay beyond the date of the offer document or offeree board circular (as the case may be) in exceptional circumstances.

29.3 THE VALUER

(a) A valuer must:

- (i) be considered by the Panel to be independent of the parties to the offer;
- (ii) be appropriately qualified to give a valuation report on the valuation; and
- (iii) have sufficient current knowledge of each relevant market and the necessary skills and understanding to prepare the valuation report.

(b) The Panel must be consulted in advance if there is any doubt as to whether a valuer satisfies the requirements of Rule 29.3(a).

29.4 THE VALUATION REPORT

(a) A valuation report must include:

- (i) the name, address and professional qualifications of the valuer;
- (ii) the date as at which the assets were valued;
- (iii) details of the assets which are the subject of the valuation report;

- (iv) separate valuations of each category of assets, and/or individual significant assets, consistent with any previously published valuations of those assets or with normal valuation reporting practice for such assets;
 - (v) details of the valuation standards to which the valuation report has been prepared (see Note 1); and
 - (vi) the basis of valuation (see Note 2).
- (b) A valuation report must not be:
- (i) qualified; or
 - (ii) subject to special assumptions (e.g. an assumption that assumes facts that differ from the actual facts existing at the date of the valuation or which would not be made by a typical market participant in a transaction on the date of the valuation),

except as required by Note 3(a), or otherwise with the consent of the Panel, in which case any qualifications or special assumptions must be fully explained.

(c) In preparing a valuation report in respect of a portfolio of assets, the valuer must normally value all of the assets in the portfolio. In the case of a portfolio with a large number of similar assets, the Panel may consent to the valuer valuing only a representative sample of the portfolio (see Note 4).

(d) Any valuation report must be published on a website in accordance with Rule 26.3.

NOTES ON RULE 29.4

1. Valuation standards

A valuation report must be prepared in accordance with:

(a) *valuation standards published by the Royal Institution of Chartered Surveyors or the International Valuation Standards Council; or*

(b) *other appropriate professional standards approved by the Panel,*

and on a basis which is consistent with past practice in relation to the assets concerned.

2. Basis of valuation

The basis of valuation should normally be market value. See also Note 3.

3. Development land

In the case of land being developed or with immediate development potential, in addition to the market value of the land at the date of valuation, the valuation report must include:

(a) *the value on the assumption that the development has been completed and, if applicable, let;*

(b) *the estimated total cost, including carrying charges, of completing the development;*

(c) *the expected dates of completion and, if applicable, of letting or occupation; and*

(d) *a statement as to whether planning consent has been obtained and, if so, the date of the planning consent and any conditions attaching to the consent which may affect the value.*

4. Representative sample of a portfolio of assets

The Panel will normally only grant its consent under Rule 29.4(c) where the valuer is familiar with the portfolio as a whole. In such cases:

(a) the valuer must report on the representative sample and certify the representative nature of the sample; and

(b) the directors must take sole responsibility for estimates, based on the sample, to cover the remaining properties. The directors' estimates and a comparison of the estimates with book values must be included in any document or announcement in which the valuation report on the representative sample is published.

29.5 NO MATERIAL DIFFERENCE STATEMENT

(a) If the date as at which the assets were valued is not the same as the date of the document or announcement in which the valuation report is published, the document or announcement must include a statement by the directors of the offeree company or the securities exchange offeror that the valuer has confirmed that an updated valuation would not be materially different.

(b) If such a statement cannot be made, the offeree company or the securities exchange offeror (as the case may be) must publish an updated valuation.

29.6 POTENTIAL TAX LIABILITY

(a) Except with the consent of the Panel, any document or announcement in which a valuation report is published must (if it is not already included in the valuation report) include an estimate by the directors of the offeree company or the securities exchange offeror of the amount of any potential tax liability which would arise if the assets were to be sold at the amount of the valuation and a comment as to the likelihood of any such liability crystallizing.

(b) Where the Panel has given its consent under Rule 29.6(a), the document or announcement must:

(i) explain why an estimate cannot be given; and

(ii) describe the tax consequences of a sale of the assets.

29.7 PROFIT FORECASTS

If the publication of information contained in a valuation report could constitute a profit forecast, the Panel must be consulted in advance.

29.8 VALUATION OF ANOTHER PARTY'S ASSETS

A party to an offer will not normally be permitted to publish a valuation of assets of another party to an offer unless the valuation is the subject of an unqualified valuation report prepared in accordance with the requirements of this Rule 29 by a valuer who has had access to sufficient information to prepare such a report.

Part 2: Other amendments to the Code

Rule 8

RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS

...

NOTES ON RULE 8

...

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

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

Rule 23.2

23.2 CONSENT TO INCLUSION OF ADVICE, OPINIONS AND REPORTS

If any document or announcement published in connection with an offer includes:

...

(c) ~~an opinion on value~~ a valuation report 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, or report or opinion (as the case may be) in the relevant document in the form and context in which it is included.

Rule 26.3

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):

...

(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)) valuation report (Rule 29.4(d)); and~~

(ii) ~~the written consent of the independent valuer to the inclusion of its opinion on value valuation report in the relevant document in the form and context in which it is included (Rule 23.2(c)); and,~~

(iii) ~~if appropriate, the confirmation by the valuer that its report continues to apply an updated valuation would not be materially different (Rules 29.5(a) and 27.2(d));~~

Rule 27.2

27.2 SUBSEQUENT DOCUMENTS

...

(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:

...

(iii) ~~where an opinion on value a valuation report was obtained on an asset valuation, that the independent valuer has confirmed that its opinion continues to apply an updated valuation would not be materially different.~~