

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2021/1

Conditions to offers and the offer timetable

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 5 July 2021, in accordance with the Appendix.

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

31 March 2021

APPENDIX

DEFINITIONS

Acceleration statement

An acceleration statement is a statement in which an offeror brings forward the latest date by which all of the conditions to the offer must be satisfied or waived.

Acting in concert

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NOTES ON ACTING IN CONCERT

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11. Indemnity and other dealing arrangements

(a) ...

(b) ...

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

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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.~~

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Day 14

Day 14 means the 14th day following the date on which the initial offer document is published (see Rule 25.1(a)).

Day 21

Day 21 means the 21st day following the date on which the initial offer document is published (see Rule 31.2).

Day 39

Day 39 means the 21st day prior to Day 60 (see Rule 31.8).

Day 46

Day 46 means the 14th day prior to Day 60 (see Rule 32.1(c)).

Day 53

Day 53 means the seventh day prior to Day 60 (see Rules 2.6(d) and (e)).

Day 60

Day 60 means the 60th day following the publication of the initial offer document or such later date as is set pursuant to Rule 31.3.

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

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Derivative

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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~~ possible offer. The Panel will not normally regard a derivative which is referenced to a basket or index of securities, including relevant securities, as connected with an offer or ~~potential~~ possible 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.

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Material official authorisation or regulatory clearance

An official authorisation or regulatory clearance is a material official authorisation or regulatory clearance if the Panel is satisfied that the failure to obtain the authorisation or

clearance could give rise to circumstances which are of material significance to the offeror in the context of the offer (see Rule 13.5(a)).

NOTE ON MATERIAL OFFICIAL AUTHORISATION OR REGULATORY CLEARANCE

A determination by the Panel that an official authorisation or regulatory clearance is a material official authorisation or regulatory clearance should not be taken as an indication that the Panel would agree that the failure to obtain the authorisation or clearance would result in circumstances of material significance to the offeror in the context of the offer for the purposes of Rule 13.5(a).

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Offer period

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Subject to Note 32, 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

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~~2.~~ Competition reference periods

~~See Rule 12.2.~~

~~32.~~ First closing date Unconditional offers

~~Where an offer is unconditional from the outset, or becomes or is declared unconditional as to acceptances prior to the first closing date Day 21, the offer period will nevertheless continue until the first closing date Day 21.~~

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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.~~

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Reverse takeover

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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.

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Unconditional date

The unconditional date is Day 60 or any earlier date specified by an offeror as being the latest date by which all of the conditions to the offer must be satisfied or waived.

Rule 2

2.5 TERMS AND PRE-CONDITIONS IN POSSIBLE OFFER ANNOUNCEMENTS

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(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~~ **include in a possible offer announcement any pre-conditions to the making of an announcement of a firm intention to make an offer. Any such pre-conditional possible offer announcement must:**

(i) clearly state whether or not the pre-conditions must be satisfied before a firm intention to make an offer can be ~~made~~ announced 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.

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2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT

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(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~~ Day 53, either:

...

(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~~ Day 53, either:

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2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

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(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 13.5, 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 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) language which appropriately reflects that the offeror may only invoke any condition or pre-condition which is subject to Rule 13.5(a) with the consent of the Panel;
- (v) a statement as to which conditions and pre-conditions are not subject to Rule 13.5(a) (see Rule 13.5(c));
- (vi) a statement that any condition or pre-condition that is subject to Rule 13.5(a) may be waived by the offeror (see Rule 13.5(d));
- ~~(iv) the intentions of the offeror with regard to the business, employees and pension scheme(s) of the offeree company (see Note 1);~~
- (vii) details of any agreements or arrangements ... ;
- (viii) the intentions of the offeror with regard to the business, employees and pension scheme(s) of the offeree company (see Note 1);
- ~~(vix) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest ... ;~~
- ~~(vix) details of any irrevocable commitment ... ;~~
- ~~(vixi) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent ... ;~~
- ~~(ixii) details of any dealing arrangement ... ;~~
- (xiii) a summary of the provisions of Rule 8 ... ;
- (xiv) a summary of any offer-related arrangement ... ;
- (xiv) a list of the documents published on a website... ; and
- ~~(xviii) a statement that the offeror will have the right to reduce the offer consideration by the amount of any dividend~~

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NOTES ON RULE 2.7

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~~viii), the offeror must explain the long-term commercial justification for the offer and must state:

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~~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);~~

~~(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).~~

32. Persons acting in concert with the offeror

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43. Reservations to a previous statement in relation to the terms of a possible offer

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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)(vix), 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 4.5

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.

Rule 5.2

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:~~

...

(iii) ~~the first closing date Day 21~~ of that offer₁ or of any competing offer₁ has passed; or

(iv) that offer is unconditional ~~in all respects~~; or

Rule 6

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

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NOTES ON RULE 6

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~~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 8

RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS

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NOTES ON RULE 8

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3. Method of disclosure

(a) Public disclosures

Public disclosures under Rule 8 must be made to a RIS in typed format by electronic delivery and may be made by the person concerned or by an agent acting on its behalf. See also the Note on Rule 30.1 with regard to unquoted public companies and relevant private companies.

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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. See also the Note on Rule 30.1.

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14. Irrevocable commitments and letters of intent

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

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:

...

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.

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NOTES ON RULE 9.1

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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 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, w~~*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 31.42 and 33.1.

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10. Convertible securities, warrants and options

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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 10.1 will be relevant.

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9.3 RESTRICTION ON CONDITIONS AND CONSENTS

NB This Rule should be read in conjunction with Appendix 4.

Except with the consent of the Panel (see Note 3 the Note on Rule 9.4):

(a) an 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 in the offeree company; 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 9 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 10.1 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 10.1 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.)

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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.)~~

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.~~

9.4 RESTRICTION ON ACQUISITIONS

Except with the consent of the Panel, no acquisition of any interest in shares which would give rise to a requirement for an offer under Rule 9 may be made if the making or implementation of that offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or on any other conditions, consents or arrangements.

NOTE ON RULE 9.4

When a dispensation may be granted

(a) The Panel will normally only grant a dispensation under Rule 9.4 if the share purchase agreement in relation to the acquisition of the interest in shares which would give rise to a requirement for an offer under Rule 9 is made subject to a condition relating to a material official authorisation or regulatory clearance, which is also included as a condition or pre-condition to the offer, and to no other conditions.

(b) An announcement in compliance with Rule 2.7 will be required to be made under Rule 2.2(b) immediately upon the entering into of the share purchase agreement, following

which the offeror must use all reasonable efforts to ensure the satisfaction of the condition(s) to the share purchase agreement (see Rule 13.2).

(c) The terms of the share purchase agreement must provide that the condition relating to the material official authorisation or regulatory clearance may only be invoked with the consent of the Panel, which consent will normally only be given if the circumstances which give rise to the right to invoke the condition are considered by the Panel to be of material significance to the offeror in the context of the offer (see Rule 13.5(a)).

9.5 CONSIDERATION TO BE OFFERED

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(d) The cash offer or the cash alternative must remain open for not less than 14 days 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 31.42).

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9.6 OBLIGATIONS OF DIRECTORS

(a) When directors (or their close relatives or the related trusts of any of them) 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 Rule 9.1, the directors must ensure that as a condition of the sale (or other relevant transaction) the person undertakes to fulfil his_its obligations under the Rule.

(b) ~~In addition, e~~ Except with the consent of the Panel, such directors should not resign from the board until the first closing date of the offer Day 21 or the date when the offer becomes wholly unconditional, whichever is the later.

Rule 10

RULE 10. THE ACCEPTANCE CONDITION*

NB This Rule should be read in conjunction with Appendix 4.

10.1 REQUIREMENT FOR 50% ACCEPTANCE CONDITION

~~It must be a condition of a~~ 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 **must include an acceptance condition that is not capable of being satisfied 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

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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 acceptance condition is satisfied, 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.

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4. Acceptances

NB1 Attention is drawn to Note 6 below which will be relevant ~~if in determining whether an acceptance condition is to be fulfilled has been satisfied (or is capable of being satisfied) before the final closing date unconditional date.~~

...

An acceptance may not be counted towards ~~fulfilling the satisfaction of 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 unconditional date;~~ 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 unconditional date~~ 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:

...

(iii) from a registered holder or ~~his~~ ~~the registered holder's~~ personal representatives (but only up to the amount of the registered holding as at the ~~final time for acceptance unconditional date~~ 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

...

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.

An acceptance which has been withdrawn must not be counted towards satisfying an acceptance condition.

5. Purchases

NB attention is drawn to Note 6 below which will be relevant ~~if in determining whether an acceptance condition is to be fulfilled has been satisfied (or is capable of being satisfied) before the final closing date unconditional 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 the satisfaction of an acceptance condition only if:~~

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**6. ~~Offers becoming or being declared unconditional as to acceptances~~
Satisfaction of the acceptance condition before the final closing date
unconditional date**

In determining whether an acceptance condition has been ~~fulfilled~~ satisfied (or is capable of being satisfied) before the ~~final closing date~~ unconditional date, all acceptances and purchases that comply with the requirements of Notes 4 and 5 on Rule 10.1 may be counted, other than those which fall within paragraph (c)(iii) of Note 4 or Note 8.

7. Offeror's receiving agent's certificate

Before an offer may become or be declared unconditional as to acceptances the acceptance condition can be satisfied or the offer can lapse as a result of the acceptance condition not have been satisfied (or being regarded as incapable of satisfaction), 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 10.1 and the number of shares otherwise acquired, whether before or during an offer period, which comply with Note 5 on Rule 10.1 and, in each case, if appropriate, Note 6 on Rule 10.1, but which do not fall within Note 8 on Rule 10.1.

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~~ satisfying an acceptance condition.

10.2 SATISFACTION OF THE ACCEPTANCE CONDITION

Except with the consent of the Panel, the acceptance condition must not be capable of being satisfied until all of the other conditions to the offer have been either satisfied or waived.

NOTE ON RULE 10.2

When a dispensation may be granted

The Panel will normally grant a dispensation from the requirement in Rule 10.2 where another condition is not capable of being satisfied until after the acceptance condition has been satisfied (such as a condition relating to the admission to listing and/or admission to trading of the securities being offered as consideration).

Rule 11

11.1 WHEN A CASH OFFER IS REQUIRED

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NOTES ON RULE 11.1

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~~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

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NOTES ON RULE 11.2

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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.~~

Rule 12

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:~~

~~(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 or initiation of Phase 2 European Commission proceedings. 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.*

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 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 it, would be interested and the shares in respect of which it, 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;~~

~~(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; or~~

~~(F) purchase, agree to purchase, or make any statement which raises or confirms the possibility that it is interested in purchasing assets which are significant in relation to the offeree company;~~

~~(ii) at the end of the competition reference period, if the offer is allowed to proceed (whether conditionally or unconditionally):~~

~~(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 disapplied 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, 21.3 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. 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.~~

5. — Significant asset purchases

~~In assessing whether assets are significant for the purpose of Rule 12.2(b)(i)(F), the Panel will have regard to the tests set out in Note 5 on Rule 2.8.~~

RULE 12. LONG-STOP DATE*

12.1 INCLUSION OF A LONG-STOP DATE

(a) The offeror must include a term in the firm offer announcement and in the offer document that the offer will not proceed, will lapse or will be withdrawn on a specific date (a "long-stop date"):

(i) if sufficient acceptances have not been received so as to enable to acceptance condition to be satisfied (other than in the case of a pre-conditional offer); or

(ii) with the consent of the Panel, if a condition or pre-condition relating to an official authorisation or regulatory clearance has not been satisfied or waived.

(b) If the offer is not recommended by the board of the offeree company, the Panel must be consulted prior to the publication of the firm offer announcement as to the date of the long-stop date. In such circumstances, the Panel will normally require the long-stop date to be no earlier than the date by which the last condition or pre-condition relating to an official authorisation or regulatory clearance is reasonably expected to be satisfied.

12.2 WHEN CONSENT MAY BE GIVEN UNDER RULE 12.1

The Panel will normally give its consent under Rule 12.1(a)(ii) if it is satisfied, as at the long-stop date, that the outstanding official authorisation or regulatory clearance is a material official authorisation or regulatory clearance, and provided that either:

(a) it is not sufficiently clear what action would be required to be taken in order for the authorisation or clearance to be obtained; or

(b) if it is sufficiently clear what action would be required to be taken in order for the authorisation or clearance to be obtained, the taking of that action would give rise to circumstances which are of material significance to the offeror in the context of the offer (see Rule 13.5(a)).

12.3 EXTENSION OF A LONG-STOP DATE

Except with the consent of the Panel, the long-stop date may only be extended by the offeror with the agreement of the offeree company.

NOTE ON RULE 12

Where a determination under Rule 12 remains outstanding on the long-stop date

If a question as to whether the Panel will give its consent under Rule 12.1(a)(ii) remains outstanding on the long-stop date, the offeror will not normally be permitted to lapse or withdraw the offer pending the final determination of the issue.

*Rule 12 is disapplied in a scheme. See Appendix 7.

Rule 13

RULE 13. PRE-CONDITIONS IN FIRM OFFER ANNOUNCEMENTS AND OFFER CONDITIONS AND PRE-CONDITIONS TO AN OFFER

...

~~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).~~

13.2 REQUIREMENT TO USE ALL REASONABLE EFFORTS

Following the announcement of a firm intention to make an offer, an offeror must use all reasonable efforts to ensure the satisfaction of any conditions or pre-conditions to which the offer is subject.

13.3 ACCEPTABILITY OF PRE-CONDITIONS

(a) 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.

(b) 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 an official authorisation or regulatory clearance relating to the offer and either:~~

~~(i) the offer is publicly recommended by the board of the offeree company agrees to the pre-condition; or~~

~~(ii) the Panel is satisfied that it is likely to prove impossible to obtain the authorisation or clearance within the Code timetable is a material official authorisation or regulatory clearance.~~

~~(See Note 2 on Rule 2.7.)~~

13.4 FINANCING CONDITIONS AND PRE-CONDITIONS

(a) ...

(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 (see Note). ~~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).~~

Any sSuch conditions must not be waivable and the Panel must be consulted in advance.

(c) ...

(d) ...

NOTE ON RULE 13.4

Conditions necessary for the issue, listing or admission to trading of new securities

Conditions which will normally be considered necessary for the purposes of issuing new securities or having them listed or admitted to trading include:

(a) a condition relating to 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

(b) where the new securities are to be admitted to listing or to trading on any investment exchange or market, any condition required to give effect to a legal or regulatory requirement relating to the listing and/or admission to trading of those securities (see also Rule 24.10).

13.5 INVOKING CONDITIONS AND PRE-CONDITIONS

(a) ~~An offeror should not~~ may only invoke any a condition or pre-condition so as to cause the offer not to proceed, to lapse or to be withdrawn ~~unless with the consent of the Panel. The firm offer announcement and the offer document must each incorporate language which appropriately reflects this requirement. The Panel will normally only give its consent if the circumstances which give rise to the right to invoke the condition or pre-condition are of material significance to the offeror in the context of the offer. This will be judged by reference to the facts of each case at the time that the relevant circumstances arise. 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.~~

(b) The following will not be subject to Rule 13.5(a):

(i) the acceptance condition (see Rules 9.3 and 10.1);

(ii) a condition relating to the approval of a scheme of arrangement by the offeree company's shareholders or to the sanctioning of the scheme by the court;

(iii) where the offeror proposes to finance cash consideration by an issue of new securities, a condition required under Rule 13.4(b);

(iv) where securities are offered as consideration, a condition required to give effect to a legal or regulatory requirement relating to the issuance, listing and/or admission to trading of those securities (see the Note on Rule 13.4);

(v) a condition required to give effect to a legal or regulatory requirement, or a requirement of the offeror's articles of association (or equivalent), for the offeror's shareholders to approve the implementation of the offer;

(vi) a term relating to the long-stop date of a contractual offer (but see the separate requirements of Rules 12.1 and 12.2);

(vii) a condition relating to a long-stop date of a scheme of arrangement or a specific date by which the shareholder meetings or the court sanction hearing must be held (see Sections 3(b) and (c) of Appendix 7 and also the separate requirements of Section 3(g) of Appendix 7); and

(viii) any other condition or pre-condition that the Panel has agreed will not be subject to Rule 13.5(a) in the particular circumstances.

(c) The firm offer announcement and the offer document must state which conditions and, in the case of a firm offer announcement, pre-conditions are not subject to Rule 13.5(a).

(d) The firm offer announcement and the offer document must state that any condition or, in the case of a firm offer announcement, pre-condition that is subject to Rule 13.5(a) may be waived by the offeror.

13.6 INVOKING OFFEREE PROTECTION CONDITIONS

...

NOTES ON RULE 13.6

1. — When an offeree protection condition may be invoked

...

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.*

Rule 17

RULE 17. ANNOUNCEMENT OF ACCEPTANCE LEVELS*

17.1 TIMING AND CONTENTS

(a) An offeror must make an announcement including the details set out in Rule 17.2 Bby 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 each of the following days:

- (i) Day 21 and every seventh day thereafter;
- (ii) any day on which an offer is revised;
- (iii) each day in the week leading up to, and including, the unconditional date or the long-stop date;
- (iv) any day on which an acceptance condition invocation notice expires;
- (v) any day on which the offer becomes or is declared unconditional or lapses; and
- (vi) any day on which, as at 5.00 pm, the total percentage of shares which the offeror may count towards satisfaction of the acceptance condition has increased or decreased to, or through, any of the following thresholds:
 - (A) the percentage threshold to which the acceptance condition is currently subject;
 - (B) 75% of the shares carrying voting rights in the offeree company; and
 - (C) if the threshold in (A) can be reduced to a specified minimum threshold, that threshold.

(b) An offeror must also include the details set out in Rule 17.2 in any announcement which includes:

- (i) an acceptance condition invocation notice; or
- (ii) an acceleration statement.

17.2 CONTENTS

(a) The An announcement made pursuant to Rule 17.1 must state:

- (ai) 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;
- (bii) 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~~ either of them 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;
- (eiii) 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 2.10); and

(div) 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.)

(b) Any announcement made pursuant to this Rule 17.1 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 17.1.

17.3 GENERAL STATEMENTS ABOUT ACCEPTANCE LEVELS

If, during an offer, any statement, either oral or in writing, is 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 Rule 17.2.

NOTES ON RULE 17.4

~~1. Acceptances of cash underwritten alternatives~~

~~Acceptances of cash underwritten alternatives do not come within this Rule.~~

~~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. Unlisted companies~~

~~In the case of companies whose securities are not admitted to listing or admitted to trading, it will normally be permissible to send a notification to all shareholders and persons with information rights instead of making an announcement.~~

51. 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.

62. 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~~ satisfying an acceptance condition under Notes 4, 5 and 6 on Rule 10.1.

3. Suspension of offer timetable

The requirement to make announcements under Rule 17.1(a)(i) will not normally apply for the duration of any suspension of the offer timetable pursuant to Rule 31.4(a). The requirement under Rule 17.1(a)(i) will resume when the offer timetable resumes and the offeror must accordingly make an announcement including the details set out in Rule 17.2 by no later than 8.00 am on the business day following the date of the announcement made under Rule 31.4(d).

~~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

RULE 18. THE USE OF PROXIES AND OTHER AUTHORITIES IN RELATION TO ACCEPTANCES*

...

(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;

Rule 19.7

~~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

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

...

NOTES ON RULE 20.1

...

4. Investment analyst publications

...

~~(c) 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). Firms to which this Note applies must, however, consult the Panel about the publication of information 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.~~

...

20.5 ADVERTISEMENTS

...

(c) The categories are as follows:

...

(iii) advertisements which contain only factual information in relation to an offer (for example, reminders as to ~~closing dates and times~~ the unconditional date or the value of an offer) and not any argument or opinion in relation to an offer;

Rule 21

21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED

...

NOTES ON RULE 21.1

...

2. Material amount

...

~~(c) Subject to Note 4,~~ Relative values of 10% or more will normally be regarded as being of a material amount, although relative values lower than 10% may be considered material if the asset is of particular significance.

...

~~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.~~

~~54. Service contracts~~

...

~~65. Established share option schemes~~

...

~~76. Pension schemes~~

...

~~87. Inducement fees~~

...

21.2 OFFER-RELATED ARRANGEMENTS

...

NOTES ON RULE 21.2

1. Competing offerors

...

(b) any inducement fee is capable of becoming payable only if an offer becomes or is declared ~~wholly~~ unconditional.

...

21.3 EQUALITY OF INFORMATION TO COMPETING OFFERORS

...

NOTES ON RULE 21.3

...

~~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 21.3 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.~~

65. Information given to a purchaser of assets

...

Rule 24**24.1 THE OFFER DOCUMENT**

...

NOTE ON RULE 24.1**Pre-conditional offers**

Where an offeror announces a firm intention to make an offer subject to one or more pre-conditions in accordance with Rule 13.3, the Panel will normally require the offer document to be published within 28 days of the last remaining pre-condition being either satisfied or waived.

...

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

...

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

...

(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 31.89 or, in the case of a scheme of arrangement, Section 10 of Appendix 7;

(vi) all conditions to which the offer is subject;

(vii) language which appropriately reflects that the offeror may only invoke any condition which is subject to Rule 13.5(a) with the consent of the Panel;

(viii) a statement as to which conditions are not subject to Rule 13.5(a) (see Rule 13.5(c));

(ix) a statement that any condition that is subject to Rule 13.5(a) may be waived by the offeror (see Rule 13.5(d));

~~(vix)~~ particulars of all documents required, and procedures to be followed, for acceptance of the offer ... ;

~~(viii)~~ the middle market quotations for the securities to be acquired ... ;

~~(ix)~~ details of any agreements or arrangements ... ;

(xiii) details of any irrevocable commitment ... ;

(xiv) in the case of a securities exchange offer, full particulars of the securities being offered ... ;

(xiiiv) a summary of the provisions of Rule 8 ... ;

(xviii) the national law which will govern contracts ... ;

(xivii) the compensation (if any) offered for ... ;

(xviii) any post-offer undertaking ... ;

(xvix) a summary of any offer-related arrangement ... ;

(xvix) a list of the documents which the offeror has published on a website ... ; and

(xvixi) any profit forecast or quantified financial benefits statement ... ;

...

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 10.1 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 10.1 is regarded as being sufficient appropriately to reflect those Notes but cross references to other provisions of the Code are not permitted.

2. *Rule 31.67(db)*

Rule 24.7 does not apply to the requirement, imposed by Rule 31.67(db), 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~~ unconditional date. Accordingly this requirement should not be reflected in the terms of the offer.

...

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.~~

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

...

24.174 DIVIDENDS

...

Rule 25**25.1 THE OFFEREE BOARD CIRCULAR**

(a) Except with the consent of the Panel, the board of the offeree company must, ~~within 14 days of the publication of the offer document~~ by no later than Day 14, send a circular to shareholders in the offeree company and persons with information rights, in accordance with Rule 30.2.

...

25.9 EMPLOYEE REPRESENTATIVES' OPINION AND PENSION SCHEME TRUSTEES' OPINION

...

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

...

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)(vii)).

...

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.~~

Rule 27.2

27.2 SUBSEQUENT DOCUMENTS

...

(b) In the case of an offeror, the matters referred to in Rule 27.2(a)(ii) are as follows:

...

(vi) any agreements or arrangements which relate to the invocation of the conditions to its offer (Rule 24.3(d)(~~ix~~**xii**));

(vii) irrevocable commitments and letters of intent (Rule 24.3(d)(**xiii**));

(viii) post-offer undertakings (Rule 24.3(d)(**xviii**));

(ix) any offer-related arrangements etc. permitted under, or excluded from, Rule 21.2 (Rule 24.3(d)(~~xvix~~));

(x) profit forecasts and quantified financial benefits statements (Rule 24.3(d)(~~xviii~~**xi**));

Rule 30.1

30.1 ANNOUNCEMENTS TO BE PUBLISHED VIA A RIS

...

NOTE ON RULE 30.1

Unquoted public companies and relevant private companies

(a) The Panel will normally grant a dispensation from the requirement for announcements to be published via a RIS where the relevant securities in the offeree company are not admitted to trading, provided that the offeree company agrees to publish all relevant announcements on its website. Any such dispensation will not apply to the announcements which commence and end the offer period, which must be published in accordance with Rule 30.1(a).

(b) In such circumstances, the Panel will also normally grant a dispensation from the requirements of Note 3 on Rule 8, such that public disclosures made under Rule 8 may be made to the offeree company and published on its website rather than being made via a RIS.

Rule 31

RULE 31. TIMING OF THE OFFER*

**This Rule is disapplied in a scheme. See Appendix 7.*

31.1 DAY 60 AND THE UNCONDITIONAL DATE

(a) Except with the consent of the Panel, all of the conditions to an offer must be satisfied or waived, or the offer must lapse, by midnight on Day 60.

(b) An offeror which wishes to specify an unconditional date in the initial offer document which is earlier than Day 60 must consult the Panel in advance and will normally be treated as having made an acceleration statement.

31.12 ~~FIRST CLOSING DATE~~ PERIOD FOR WHICH THE OFFER MUST REMAIN OPEN FOR ACCEPTANCE

(a) An offer must initially be open for acceptance until the later of Day 21 and the date on which the offer becomes or is declared unconditional or lapses 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

(b) In addition, Aafter an offer has becomes or is declared unconditional as to acceptances, the offer it 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) and the offeror must give at least 14 days' notice before the offer is closed.

(c) Subject to paragraph (a), Wwhen, however, an offer is unconditional as to acceptances from the outset, a 14 day extension is not required but not subject to an acceptance condition it is not required to remain open for acceptance in accordance with paragraph (b), provided that the position should be is set out clearly and prominently in the offer document.

(d) When an offer becomes or is declared unconditional and remains open for acceptance until further notice, a notification must be sent to offeree company shareholders and persons with information rights at least 14 days before the offer is closed.

31.3 EXTENSIONS TO DAY 60

The Panel will normally only extend Day 60 beyond the 60th day following the publication of the initial offer document:

- (a) if a competing firm offer has been announced (see Note 1); or**
- (b) if the board of the offeree company consents to an extension; or**
- (c) as provided for in Rule 31.4 (Suspension of offer timetable if an official authorisation or regulatory clearance remains outstanding); or**
- (d) as provided for in Rule 31.8 (Offeree company announcements after Day 39); or**
- (e) if the offeror's receiving agent requests an extension for the purpose of complying with Note 7 on Rule 10.1.**

NOTES ON RULE 31.3

1. Timetable for competing firm offers

If a competing firm offer has been announced, Day 60 for both offerors will normally be set by reference to the publication of the later offer document. In addition, the Panel may extend Day 60 to allow for any auction procedure under Rule 32.5. See also the Note on Rule 31.4.

2. Day 46

If the Panel extends Day 60 after Day 46 has passed, the offeror will normally be able to revise its offer by no later than the new Day 46, provided that it is not prevented from doing so by the terms of an acceleration statement or a no increase statement.

The Panel will not normally extend Day 60 under Rule 31.3(b) after Day 46 has passed where competing offers have been made.

31.4 SUSPENSION OF OFFER TIMETABLE IF AN OFFICIAL AUTHORISATION OR REGULATORY CLEARANCE REMAINS OUTSTANDING

(a) If one or more conditions relating to an official authorisation or regulatory clearance has not been satisfied or waived by 5.00 pm on the second day prior to Day 39, the Panel will normally suspend the offer timetable:

- (i) at the joint request of the offeror and the offeree company; or**
- (ii) at the request of either the offeror or the offeree company, provided that at least one of the outstanding conditions relates to a material official authorisation or regulatory clearance.**

(b) A suspended offer timetable will resume on the date on which the last condition relating to a relevant official authorisation or regulatory clearance is satisfied or waived, which will normally become the 28th day prior to Day 60.

(c) With the consent of the offeree company, a suspended offer timetable may be resumed without the offeror being required to waive any unsatisfied condition relating to an official authorisation or regulatory clearance, in which case the offer timetable will normally resume on the 28th day prior to Day 60.

(d) Where an offer timetable resumes in accordance with paragraph (b) or (c), the offeror must make an immediate announcement confirming the new Day 60.

NOTE ON RULE 31.4**Competing offers**

If there are two or more competing offers and the offer timetable is suspended under Rule 31.4(a), the offer timetable will normally be suspended for all the offerors and will normally only resume when it is resumed by the last offeror in accordance with Rule 31.4(b) or (c). Alternatively, an offeror may bring forward the unconditional date of its offer by making an acceleration statement.

31.5 ~~NO EXTENSION~~ ACCELERATION 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.~~

(a) Where an offeror makes an acceleration statement, the new unconditional date must be not less than 14 days from the date on which the acceleration statement is made.

(b) An acceleration statement must state that the offeror has waived any and all unsatisfied conditions relating to any official authorisation or regulatory clearance.

(c) If an offeror makes an acceleration statement prior to Day 39, Rule 31.8(a) will be disapplied and there will therefore be no restriction on the date by which the board of the offeree company may announce any material new information.

(d) If an offeror makes an acceleration statement, Rules 2.6(d) and (e) will be disapplied and there will therefore be no requirement for a potential competing offeror to clarify its position by no later than Day 53.

~~(be) If an offeror (or its directors, officials or advisers) makes a no extension an acceleration 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 set the statement aside, except:~~

- ~~(i) where the right to do so in certain circumstances is specifically reserved at the time the no extension acceleration statement is made and those circumstances subsequently arise; or~~
- ~~(ii) in wholly exceptional circumstances.~~

~~(ef) If an offeror wishes to include a reservation to a no extension an acceleration statement, the Panel must be consulted. See also Rule 35.1(f) and Note 1(a)(i) on Rules 35.1 and 35.2.~~

(g) If any of an offeror’s directors, officials or advisers makes a statement that a new unconditional date will be set, and that statement is not withdrawn immediately if incorrect, the offeror will be required to make an acceleration statement.

(h) An acceleration statement must be published in accordance with Rule 30.1.

~~(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~~ an acceleration statement aside

(a) ~~A no extension~~ An acceleration 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~~ acceleration 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~~ acceleration 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 32 and 43 describe examples of specific types of reservation to set a ~~no extension~~ an acceleration 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).~~

32. Competitive situations

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

~~(a) make an announcement to this effect as soon as possible (and in any event within 4 business days after the day date 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 offeror whether publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)

43. Rule 31.98 announcements

An offeror may reserve the right to set aside a ~~no extension~~ an acceleration statement in the event of the offeree company making an announcement of the kind referred to in Rule 31.98 ~~after the 39th day following the publication of the initial offer document~~ Day 39 only if the ~~no extension~~ acceleration 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~~ acceleration 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. The Panel should be consulted as to whether a notification in respect of the extension should also be sent to offeree company shareholders and persons with information rights.~~

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

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

NOTES ON RULE 31.6

1. — Consequential changes to the offer timetable

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

2. — Timetable for competing firm offers

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

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

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

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

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

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

5. — The CMA and the European Commission

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

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

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

31.6 ACCEPTANCE CONDITION INVOCATION NOTICE

(a) If an offeror intends to invoke the acceptance condition so as to cause the offer to lapse on a date which is:

- (i) on or after Day 21; and**
- (ii) earlier than the unconditional date,**

it must publish a notice of its intention to do so, specifying the relevant date (an “acceptance condition invocation notice”).

(b) An acceptance condition invocation notice must:**(i) be published at least 14 days prior to the relevant date;****(ii) be irrevocable;****(iii) specify the level of acceptances which must be received in order for the offer not to lapse on the relevant date, which level cannot be changed prior to or on the relevant date; and****(iv) be published in accordance with Rule 30.1.****(c) If the required level of acceptances has not been received by 1.00 pm on the relevant date specified in an acceptance condition invocation notice, the acceptance condition will be regarded as being incapable of satisfaction and the offer must lapse.****(d) If the required level of acceptances has been received by 1.00 pm on the relevant date specified in an acceptance condition invocation notice, the acceptance condition will not be regarded as having been satisfied at that time unless all other conditions to the offer have been either satisfied or waived (see Rule 10.2).****NOTE ON RULE 31.6****Prohibition on concurrent notices**

An offeror which has published an acceptance condition invocation notice must not publish another such notice until after the relevant date specified in the first notice.

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. 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.

31.7 PROCEDURAL MATTERS ON THE UNCONDITIONAL DATE**(a) 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 10.1) 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 unconditional date. In the event of an extension to Day 60 in circumstances other than those set out in paragraphs (a) to (d) of Rule 31.3,**

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.

(b) Except with the consent of the Panel, on the unconditional date an announcement should be made by 5.00 pm as to whether:

(i) the offeror has received sufficient acceptances for the acceptance condition to be satisfied; and, if so

(ii) all other conditions to the offer have been either satisfied or waived.

Such announcement should include, if possible, the details required by Rule 17.2 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.

NOTE ON RULE 31.7

Where a Code matter remains outstanding on the unconditional date

When there is a Code matter outstanding on the unconditional date, the offer will not normally be permitted to become or be declared unconditional or to lapse pending the final determination of the issue. In such a case, the Panel may, in addition to the circumstances set out in Rule 31.3, 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 31.7(a) and Rule 34.1.

31.89 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:

(a) the first closing date of the offer, Day 21;

(b) the date the offer becomes or is declared wholly unconditional; ~~or and~~

(c) the date of receipt of an acceptance complete in all respects.

NOTE ON RULE 31.89

Extensions

Any extension to which the Panel consents must be announced by the offeror. The Panel should be consulted as to whether a notification in respect of the extension should also be sent to offeree company shareholders.

31.98 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39

(a) 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 Day 39.

(b) Where a matter which might give rise to such an announcement being made after the 39th day Day 39 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.

(c) If an announcement of the kind referred to in this ~~Rule paragraph (a)~~ is made after the 39th day Day 39, 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 re-set "Day 60"₁ (see Rule 31.65(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 seven 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

32.1 PUBLICATION OF REVISED OFFER DOCUMENT

...

(c) The offer must be kept open for at least 14 days following the ~~date on which publication of 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 after Day 46 or, where the offeror has made an acceleration statement, after the date which is 14 days prior to the unconditional date.~~ * (See also Rule 31.6 and the Notes on Rule 31.6.)

NOTES ON RULE 32.1

...

3. When revision is not permissible*

~~Since an offer must remain open for acceptance for 14 days following the date on which the revised offer document is published, an offeror will generally not be able to revise its offer, and An offeror 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~~

(a) after the date referred to in Rule 32.1(c); or

(b) if it has made a no increase statement as defined in Rule 32.2.

*The first sentence Paragraph (a) of Note 3 on Rule 32.1 is disappled in a scheme. See Section 7 of Appendix 7.

...

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

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

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

32.2 NO INCREASE STATEMENTS

...

(c) If an offeror wishes to include a reservation to a no increase statement, the Panel must be consulted. See also Rule 35.1(f) and Note 1(a)(i) on Rules 35.1 and 35.2.

(d) A no increase statement must be published in accordance with Rule 30.1.

NOTES ON RULE 32.2

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

...

~~(c) Notes 32 and 43 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.~~

32. 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-date 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.*~~

...

~~*Paragraph (b) of Note 3 is disapplied in a scheme.~~

43. Rule 31.98 announcements~~‡~~*

~~An offeror may reserve the right to set aside a no increase statement in the event of the offeree company making an announcement of the kind referred to in Rule 31.98 after the 39th day following the publication of the initial offer document Day 39 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.~~

~~‡*This Note is disapplied in a scheme.~~

54. Schemes of arrangement

...

65. Dividends

...

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

...

(b) Where ...

(i) ...

(ii) ...

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.

Rule 33

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****33.2 “MIX AND MATCH” ELECTIONS**

~~For the purpose of this Rule, a~~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. Any such arrangement must remain open so that shareholders may make elections until the date on which the offer becomes or is declared unconditional and may be closed without notice thereafter. on any closing date; tThis 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.)~~

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.~~

**This Rule is disappplied in a scheme. See Appendix 7.*

Rule 34

34.1 WHEN THE RIGHT OF WITHDRAWAL MAY BE EXERCISED

~~(a) An accepting shareholder must be entitled to withdraw his an acceptance from the date which is 21 days after the first closing date of the initial offer at any time, if the offer has not by such date become or been declared unconditional as to acceptances unless the offer is unconditional from the outset.~~

~~(b) This The entitlement to withdraw an acceptance must be exercisable until the earlier of:~~

~~(aj) the time that the offer becomes or is declared unconditional as to acceptances the acceptance condition is satisfied; and~~

~~(bii) the final latest time for lodgement the receipt of acceptances on the unconditional date 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.~~

~~34.32 RETURN OF DOCUMENTS OF TITLE~~

~~If a shareholder withdraws his an 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 seven days) and the receiving agent should immediately give instructions for the release of securities held in escrow.~~

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:

...

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~~.

...

NOTES ON RULES 35.1 and 35.2

1. When consent may be given

~~(a) The Panel will normally only give its consent under this Rule 35.1 if:~~

~~(ia) the board of the offeree company so agrees. 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 relation to which the offeror made a no increase statement or an acceleration statement without a reservation of the right to set the statement aside in the event of an increased or improved offer being recommended by the board of the offeree company;~~

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

~~(ic) the offeree company announces a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover; or~~

~~(id) 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.~~

...

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~~ that person, holds shares carrying more than 50% of the voting rights of a company, neither that person nor any person acting in concert with ~~him~~ that person may, within 6 months of the closure of any previous offer made by ~~him~~ that person 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 become or 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

...

(b) *that call option is exercised:*

(i) ...

(ii) *before any competing offer has either become or been declared unconditional ~~in all respects~~ or has itself lapsed (in the case of Rule 35.4),*

Rule 36.4

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.

Rule 37.1

37.1 POSSIBLE REQUIREMENT TO MAKE A MANDATORY OFFER

...

NOTES ON RULE 37.1

...

8. *Inadvertent mistake*

Note 4 of the Notes on the ~~the~~ Dispensations from Rule 9 may be relevant in appropriate circumstances.

Rule 38

38.2 DEALINGS BETWEEN OFFERORS AND CONNECTED EXEMPT PRINCIPAL TRADERS

...

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~~.

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.

Appendix 2

APPENDIX 2

FORMULA OFFERS GUIDANCE NOTE

...

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”).

...

9 OFFEREE BOARD OBLIGATIONS

There is no ...

Once an offer is wholly unconditional, ...

Appendix 4

APPENDIX 4

RECEIVING AGENTS' CODE OF PRACTICE

NB 1 This Appendix should be read in conjunction with Rules 9.3 and 10.1 and, in particular, Notes 4 — 8 on Rule 10.1.

...

1 INTRODUCTION

...

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~~ satisfying the acceptance condition and thus included in the certificate required by Note 7 on Rule 10.1 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.

...

3 THE PROVISION OF THE OFFEREE COMPANY'S REGISTER

...

(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 day which is two days prior to the unconditional date (the "final register day²") 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 date¹ of the offer unconditional date~~.

From the final register day² until the time that the ~~offer becomes or is declared unconditional as to acceptances~~ acceptance condition is satisfied or the offer 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 date¹ of the offer unconditional date~~ 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~~ acceptance condition is satisfied or the offer lapses, in order that any queries arising from acceptances and purchases can be investigated and accurate decisions taken.

~~* See definitions at end of Appendix~~

...

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 10.1 and, if appropriate, Note 6 on Rule 10.1.

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 10.1) set out in Note 5 on Rule 10.1 and, if appropriate, Note 6 on Rule 10.1.

7 ~~OFFERS BECOMING OR BEING DECLARED UNCONDITIONAL AS TO ACCEPTANCES~~ SATISFACTION OF THE ACCEPTANCE CONDITION BEFORE THE UNCONDITIONAL DATE FINAL CLOSING DATE~~†~~

~~Prior to an offer becoming or being declared unconditional as to acceptances~~ Before the acceptance condition can be satisfied before the final closing date† unconditional date, the offeror's receiving agent must ensure that the requirements of Note 6 on Rule 10.1 have been satisfied.

~~† See definitions at end of Appendix~~

8 DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES

...

"In issuing this certificate we have, where necessary, relied on the following matters:

...

(iii) confirmation from the offeror of the validity of shares recorded as registered holdings and purchases in the context of Note 8 on Rule 10.1.

...

DEFINITIONS

~~*final register day — the day two days prior to the final closing date† of an offer.~~

~~†final closing date — the 60th day or other date beyond which the offeror has stated that its offer will not be extended.~~

(B) if it is sufficiently clear what action would be required to be taken in order for the authorisation or clearance to be obtained, the taking of that action would give rise to circumstances which are of material significance to the offeror in the context of the offer (see Rule 13.5(a)).

NOTE ON SECTION 3

Where a determination under Section 3(g) remains outstanding on the long-stop date

If a question as to whether the proviso to Section 3(g) has been satisfied remains outstanding on the long-stop date, the parties to the offer will normally be required to agree an extension to the long-stop date pending the final determination of the issue.

...

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~~ **any 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, one week prior to that later date.**

(b) A shareholder who has elected to receive a particular form of consideration in respect of any of ~~his~~ **its** shares must be entitled to withdraw ~~his~~ **that** 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.

...

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~~ **its** 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~~ **seven** days of such lapsing or withdrawal) and the receiving agent should immediately give instructions for the release of securities held in escrow.

...

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.

...

16 PROVISIONS DISAPPLIED IN A SCHEME

The following provisions of the Code do not apply to a scheme of arrangement:

...

- ~~(d) the Note on Rule 12.1 (the effect of lapsing);~~
- (d) Rule 12 (long-stop date);**
- ~~(e) Note 2 on Rule 13.6 (availability of withdrawal rights);~~
- (fe) Rules 17.1 and 17.2 (announcement of acceptance levels);**
- (gf) Rule 18 (the use of proxies and other authorities in relation to acceptances);**
- ~~(hg) Rule 24.7 (incorporation of obligations and rights) and Rule 24.14 (cash underwritten alternatives which may be shut off);~~
- (ih) Rule 24.10 (admission to listing and admission to trading conditions);**
- (ji) Rules 31.1 to 31.10 (timing of the offer);**
- ~~(kj) Rule 32.1(c), Notes 3 (first sentence paragraph (a)) and 4 on Rule 32.1, paragraph (b) of Note 3 on Rule 32.2 and Note 43 on Rule 32.2 (revision);~~
- (lk) Rules 33.1 to 33.3 (alternative offers); and**
- (ml) Rule 34 (right of withdrawal).**

Appendix 8

APPENDIX 8

AUCTION PROCEDURE FOR THE RESOLUTION OF COMPETITIVE SITUATIONS

DEFINITIONS AND INTERPRETATION

...

Day 46

~~The 46th day following the publication by Day 46 (as defined in the Definitions Section of the Code) of the second competing offeror's offer 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.~~