

RS 2021/1 5 May 2022

# **THE TAKEOVER PANEL**

## **MISCELLANEOUS CODE AMENDMENTS**

### **RESPONSE STATEMENT BY THE CODE COMMITTEE**





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## 1. Introduction and summary

### (a) Introduction

1.1 On 2 December 2021, the Code Committee of the Takeover Panel (the “**Code Committee**”) published a [Public Consultation Paper](#) (“**PCP 2021/1**” or the “**PCP**”) which proposed amendments to various provisions of the [Takeover Code](#) (the “**Code**”), as summarised below.

### (b) Summary of proposals

(i) *Requirement for a potential offeror to disclose an obligation to offer a minimum level, or particular form, of consideration*

1.2 **Section 2** of the PCP proposed that:

(a) at the time that it is publicly identified, a potential offeror should be required to disclose any minimum level, or particular form, of consideration that it would be obliged to offer to offeree company shareholders under **Rule 6** or **Rule 11** as a result of the acquisition of interests in shares in the offeree company by it, or any person acting in concert with it, prior to that time (proposed new **Rule 2.4(c)(iii)**); and

(b) during an offer period, any potential offeror (i.e. not only the potential offerors described in the current **Note on Rule 7.1**) should be required to make an immediate announcement if it, or any person acting in concert with it, acquires interests in shares in the offeree company as a result of which it would be obliged to offer a minimum level, or particular form, of consideration to offeree company shareholders under **Rule 6** or **Rule 11** (proposed new **Rule 7.1**).

(ii) *Restriction on acquisitions of interests in shares by a mandatory offeror at the end of the offer timetable*

1.3 **Section 3** of the PCP proposed that a mandatory offeror, and any person acting in concert with it, should be restricted from acquiring additional interests in shares in the offeree company in the 14 days up to and including the unconditional date of an offer (proposed new **Rule 9.4(b)**). The same restriction was proposed in relation to the 14 days prior to the expiry of an acceptance condition invocation notice.

(iii) *The “look-back period” for determining the price of a mandatory offer*

1.4 **Section 4** of the PCP proposed the introduction of a new **Note 5 on Rule 9.5** to clarify the application of the “look-back period” for determining the minimum price of a mandatory offer.

(iv) *The chain principle*

1.5 **Section 5** of the PCP proposed:

- (a) the deletion of the “significant purpose” test in limb (b) of **Note 8 on Rule 9.1**, such that the “significant interest” test in limb (a) of **Note 8 on Rule 9.1** would become the sole test for determining whether a “chain principle” mandatory offer is required, other than in exceptional circumstances; and
- (b) that the threshold at which relative values would be considered to be “significant” for the purposes of the “significant interest” test in limb (a) of **Note 8 on Rule 9.1** should be reduced from 50% to 30%.

(v) *Restrictions following the lapsing of an offer or a statement of no intention to bid*

1.6 **Section 6** of the PCP proposed amendments to:

- (a) **Note 1(a) on Rules 35.1 and 35.2**, with regard to the circumstances in which an offeror that made a “no increase statement” or an “acceleration statement” in relation to an offer which subsequently lapsed can proceed to make a new offer even though the offeror did not reserve the right to set that statement aside with the agreement of the offeree board;
- (b) **Note 2 on Rule 2.5** and **Note 2 on Rule 2.8**, with regard to the period of time for which a potential offeror should be bound by a statement as to the terms on which a possible offer might be made; and
- (c) **Note 1(b) on Rules 35.1 and 35.2**, with regard to the circumstances in which an offeror whose offer has lapsed can proceed to make a new offer if a third party announces a firm intention to make an offer for the offeree company.

(vi) *Minor issues*

1.7 **Section 7** of the PCP proposed minor amendments in relation to:

- (a) the application of the definition of “**interests in securities**” to custodians and depositories;
- (b) the wording of **Rule 9.1(a)**;
- (c) the requirement for a “Rule 9 waiver” circular to include the offeree board’s opinion on the offeror’s plans;
- (d) the disclosure of ratings and outlooks under **Rule 24.3**;

- (e) the timing of the publication of documents on a website;
- (f) the removal of the requirement for the parties to an offer to send documents to the Panel and advisers in hard copy form; and
- (g) the default auction procedure under **Appendix 8** of the Code.

**(c) Responses to consultation**

- 1.8 The consultation period in relation to PCP 2021/1 ended on 18 February 2022. Responses were received from six respondents. The five respondents who submitted comments on a non-confidential basis are listed in **Appendix A** and their responses have been published on the Panel's [website](#). The Code Committee thanks the respondents for their comments.
- 1.9 The respondents were generally supportive of the proposals. The principal comments and suggestions made by respondents are summarised in Sections 2 to 7 below.

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

- 1.10 Having considered the responses to the consultation, the Code Committee has adopted the amendments proposed in the PCP, subject to certain modifications, as described in Sections 2 to 7 below.

**(e) Code amendments**

- 1.11 The amendments to the Code which the Code Committee has adopted as a result of the consultation are set out in **Appendix B**. In Appendix B, underlining indicates new text and striking-through indicates deleted text, as compared with the current provisions of the Code.
- 1.12 Unless stated otherwise, where new or amended provisions of the Code are set out in the main body of this Response Statement, they are marked to show changes from the provisions as they were proposed to be amended in the PCP.

**(f) Implementation**

- 1.13 The amendments to the Code set out in this Response Statement will take effect on Monday, 13 June 2022 (the "**implementation date**").
- 1.14 The Code, as amended, will be applied from the implementation date to all companies and transactions to which it relates, including those on-going transactions which straddle that date, except where to do so would give the amendments retroactive effect.

- 1.15 Where parties have doubts as to the consequences of the amendments to the Code set out in this Response Statement, in particular the impact on any transaction which is in existence or contemplation, they should consult the Panel prior to the implementation date to obtain a ruling or guidance.



**2. Requirement for a potential offeror to disclose an obligation to offer a minimum level, or particular form, of consideration**

**Q1 Should the Code be amended as proposed so as to require a publicly identified potential offeror to announce any minimum level, or particular form, of consideration it is obliged to offer to offeree company shareholders?**

**(a) Summary of proposals**

**2.1 Section 2** of the PCP proposed that:

- (a) at the time that it is publicly identified, a potential offeror should be required to disclose any minimum level, or particular form, of consideration that it would be obliged to offer to offeree company shareholders under **Rule 6** or **Rule 11** as a result of the acquisition of interests in shares in the offeree company by it, or any person acting in concert with it, prior to that time; and
- (b) during an offer period, any potential offeror (i.e. not only the potential offerors described in the current **Note on Rule 7.1**) should be required to make an immediate announcement if it, or any person acting in concert with it, acquires interests in shares in the offeree company as a result of which it would be obliged to offer a minimum level, or particular form, of consideration to offeree company shareholders under **Rule 6** or **Rule 11**.

**(b) Disclosure when a potential offeror is publicly identified**

*(i) Introduction*

2.2 All but one of the respondents supported, or did not object to, the proposal that at the time that it is publicly identified (or shortly thereafter) a potential offeror should be required to disclose any obligation to offer a minimum level, or particular form, of consideration.

*(ii) Persons acting in concert with the potential offeror*

2.3 Three respondents raised practical issues in relation to the fact that a potential offeror may not know the interests and dealings of persons acting in concert with it in the preliminary stages of an offer period. In view of this, the respondents suggested that the disclosure obligation should be applied less strictly than proposed, for example by requiring a potential offeror to disclose any required minimum level, or particular form, of consideration in its opening position disclosure (“OPD”). Under **Rule 8.1** and **Note 2 on Rule 8**, an offeror is required to make an OPD within 10 business days of the later of the

commencement of the offer period and the announcement that first identifies it as an offeror.

- 2.4 One of those respondents suggested that, if the requirement was introduced as proposed, the approach taken in **Note 2 on Rule 2.7** in relation to firm offer announcements should be replicated in relation to possible offer announcements, i.e. that if a potential offeror is not able to make enquiries of persons acting in concert with it before it makes an announcement under **Rule 2.4**, the potential offeror should be able to include relevant details in respect of such persons in its OPD.
- 2.5 The Code Committee continues to believe that the fact that any offer made by a potential offeror would have to be at no less than a particular level, or in a particular form, is material information for shareholders in the offeree company and other market participants and, accordingly, that such information should be disclosed as soon as practicable after a potential offeror is publicly identified as such.
- 2.6 The Code Committee considers that a potential offeror should be aware if it has itself acquired an interest in shares in the offeree company which would result in it having an obligation to offer a minimum level, or particular form, of consideration, and that such information should be disclosed without delay, i.e. in the announcement that first identifies it as a potential offeror. The Code Committee acknowledges, however, that a possible offer announcement required to be made under **Rule 2.2** should not be delayed in order to include any such information and understands that the Panel Executive intends to amend paragraph 9.3 of **Practice Statement No 20** in order to make this clear.
- 2.7 In addition, the Code Committee recognises that a potential offeror may not be aware if a person acting in concert with it has acquired an interest in shares in the offeree company which may be relevant for the purposes of **Rule 6** or **Rule 11**, and that making enquiries of all persons acting in concert with it before the potential offeror has been publicly identified could lead to an increased risk of a leak of the possible offer.
- 2.8 In the light of the above, the Code Committee has modified the proposal in relation to persons acting in concert with a potential offeror. If a potential offeror has an obligation to offer a minimum level, or particular form, of consideration as a result of the acquisition of an interest in shares in the offeree company by a person acting in concert with it (but the offeror was not aware of that acquisition at the time that it was publicly identified), the Code Committee has concluded that the offeror should be required to disclose that information as soon as practicable (and in any event by no later than the deadline for its OPD). It should be noted, however, that the primary requirement will be to disclose the relevant information as soon as practicable and that an offeror should not wait until the OPD deadline to disclose information if it is available before then.

2.9 The Code Committee has therefore introduced a new **Note 4 on Rule 2.4**, as follows:

**4. Persons acting in concert with a potential offeror**

*It may not be practicable for a potential offeror to make enquiries of all persons acting in concert with it prior to the announcement being made in order to confirm whether any details are required to be disclosed under Rule 2.4(c)(iii). In such circumstances, this fact should be stated and any relevant details should be announced as soon as practicable and in any event by no later than the deadline for the potential offeror's Opening Position Disclosure (see Note 2(a)(i) on Rule 8). The Panel should be consulted in all such cases.*

2.10 The Code Committee has also made a minor amendment to **Note 2 on Rule 2.7** in order to maintain consistency with the new **Note 4 on Rule 2.4**, as set out in **Appendix B**.

(iii) *Application only to a publicly identified potential offeror*

2.11 One respondent sought confirmation that the new disclosure requirement would not apply to a potential offeror which is not publicly identified in an announcement to which the new **Rule 2.4(c)** applies (for example, a potential offeror which is participating in a formal sale process initiated by the offeree board).

2.12 As noted in paragraph 2.23 of the PCP, the new requirement will only apply to any potential offeror named on the [Disclosure Table](#) published on the Panel's website, i.e. it is not intended to apply to, for example, a potential offeror that is participating in a formal sale process and which, in accordance with **Note 2 on Rule 2.6**, has not been required to be publicly identified. This is in contrast to the requirement under the new **Rule 7.1(a)**, which applies to any potential offeror whose existence has been referred to (whether publicly identified or not) (see paragraph 2.23 below). In order to clarify this, the Code Committee has modified the proposed amendments to:

(a) **Rule 2.4(c)**, as follows:

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

...

**(iii) details of any minimum level, or particular form, of consideration that ~~the~~ any potential offeror(s) identified in the announcement would be obliged to offer under Rule 6 or Rule 11 (as appropriate); and”;** and

(b) **Rule 2.4(c)(iv)** and **Note 1 on Rule 2.4**, so as to refer to any potential offeror “identified in the announcement” (see paragraphs 2.14 and 2.20 below).

(iv) *Announcement made without the potential offeror's agreement or approval*

2.13 One respondent sought confirmation that, if an announcement by the offeree company which commences an offer period, or which first identifies a potential offeror, is made without the potential offeror's agreement or approval, the announcement would not be required to include the relevant disclosures.

2.14 In order to make this clear, the Code Committee has modified the new **Note 1 on Rule 2.4**, as follows:

**"1. Announcement made without the agreement or approval of a potential offeror**

*If an announcement is made by the offeree company without the agreement or approval of a potential offeror;*

*(a) the announcement is not required to include the matters referred to in Rule 2.4(c)(iii) and (iv), insofar as they relate to the potential offeror; and*

*(b) ~~the~~ any potential offeror identified in the announcement must make a further announcement specifying the matters referred to in Rule 2.4(c)(iii) ~~or~~ and (iv) (as appropriate) as soon as practicable thereafter."*

(v) *No requirement for negative statement*

2.15 One respondent sought confirmation that the new **Rule 2.4(c)(iii)** will not require a negative statement to be made if a potential offeror does not have any obligation to offer a minimum level, or particular form, of consideration.

2.16 The Code Committee confirms this to be the case.

(vi) *Overlap with Notes 6(b) and 6(c) on Rule 8*

2.17 One respondent noted that **Notes 6(b) and 6(c) on Rule 8**, which relate to the disclosure of dealing arrangements of the kind referred to in **Note 11 on the definition of "acting in concert"**, appeared to duplicate the requirements of the new **Rule 2.4(c)(iv)**.

2.18 The Code Committee notes that:

(a) under **Note 6(b) on Rule 8**:

(i) dealing arrangements entered into by the offeree company before the start of the offer period must be disclosed in the announcement that commences the offer period; and

(ii) dealing arrangements entered into by an offeror before the announcement that first identifies it as an offeror must be disclosed in that announcement; and

- (b) under **Note 6(c) on Rule 8**:
  - (i) where a person acting in concert with the offeree company enters into a dealing arrangement before the start of the offer period, that person must disclose the arrangement as soon as possible after the commencement of the offer period; and
  - (ii) where a person acting in concert with an offeror enters into a dealing arrangement before the announcement that first identifies the offeror, that person must disclose the arrangement as soon as possible after that announcement.

2.19 The Code Committee agrees that **Note 6(b) on Rule 8** duplicates the requirements of the new **Rule 2.4(c)(iv)** and, accordingly, has deleted **Note 6(b)** and renumbered **Notes 6(c)** and **6(d)** as **Notes 6(b)** and **6(c)**. The Code Committee notes, however, that the disclosures required by the current **Note 6(c) on Rule 8** are made by persons acting in concert with either the offeree company or with an offeror, rather than by the offeree company or the offeror itself.

2.20 In the light of the above, the Code Committee has modified the new **Rule 2.4(c)(iv)** so that it does not apply to dealing arrangements entered into by persons acting in concert with the offeree company or the offeror, as follows:

**“(iv) details of any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert to which the offeree company, or a potential offeror identified in the announcement or any person acting in concert with the offeree company or a potential offeror is a party. See also Note 6(b) on Rule 8.”**

**(c) Disclosure during the offer period**

*(i) Respondents' comments*

2.21 All of the respondents supported, or did not object to, the proposal to amend the circumstances in which a potential offeror should be required, during an offer period, to make an immediate announcement if it, or any person acting in concert with it, acquires an interest in shares in the offeree company and thereby becomes obliged to offer a minimum level, or particular form, of consideration.

2.22 One respondent noted an apparent inconsistency between paragraph 2.26 of the PCP and the revised **Note on Rule 7.1** in relation to the categories of potential offeror to whom the new **Rule 7.1(a)** would apply.

(ii) *Code Committee's response*

2.23 The Code Committee confirms that the new **Rule 7.1(a)** applies to the potential offerors referred to in the amended **Note on Rule 7.1**, i.e. any potential offeror whose existence has been referred to in any announcement (whether publicly identified or not) or which is a participant in a formal sale process (regardless of whether it was a participant at the time at which the formal sale process was announced). The obligation under the new **Rule 7.1(a)** will not be limited to the circumstances specified in the current **Note on Rule 7.1**, i.e. where:

- (a) a public statement of the level of the potential offeror's possible offer has been made and the potential offeror or any person acting in concert with it acquires an interest in shares above that level; or
- (b) a third party has announced a firm intention to make an offer and the potential offeror or any person acting in concert with it acquires an interest in shares at above the level of that offer.

(d) *Code amendments*

2.24 In the light of the above, the Code Committee has:

- (a) adopted the amendments to **Rule 2.4(c)**, as proposed in paragraph 2.29 of the PCP, subject to the modifications described in paragraphs 2.12 and 2.20 above;
- (b) deleted the current **Note 1 on Rule 2.4** and introduced a new **Note 1 on Rule 2.4**, as proposed in paragraph 2.29 of the PCP, subject to the modification described in paragraph 2.14 above;
- (c) deleted the current **Note 2 on Rule 2.4** and introduced the new **Note 2 on Rule 2.4**, as proposed in paragraph 2.29 of the PCP;
- (d) introduced the new **Note 4 on Rule 2.4**, as set out in paragraph 2.9 above and amended **Note 2 on Rule 2.7**, as described in paragraph 2.10 above;
- (e) deleted the current **Rule 7.1** and introduced the new **Rule 7.1**, as proposed in paragraph 2.29 of the PCP;
- (f) amended the **Note on Rule 7.1**, as proposed in paragraph 2.29 of the PCP;
- (g) amended **Note 11(b) on the definition of "acting in concert"**, **Rule 6.1**, **Rule 6.2**, **Note 12 on Rule 8**, **Note 6 on Rule 11.1**, **Rule 11.2** and **Note 1 on Rule 11.2**, as proposed in paragraph 2.29 of the PCP; and

- (h) deleted **Note 6(b) on Rule 8** and renumbered **Notes 6(c) and 6(d) on Rule 8** as **Notes 6(b) and 6(c)**, as described in paragraph 2.19 above.

**3. Restriction on acquisitions of interests in shares by a mandatory offeror at the end of the offer timetable**

**Q2 Should a mandatory offeror, and any person acting in concert with it, be restricted from acquiring additional interests in shares in the offeree company in the 14 days up to and including: (a) the unconditional date; and (b) the expiry of an acceptance condition invocation notice?**

**(a) Summary of proposals**

3.1 **Section 3** of the PCP proposed that a mandatory offeror, and any person acting in concert with it, should be restricted from acquiring additional interests in shares in the offeree company in the 14 days up to and including the unconditional date of an offer (the proposed new **Rule 9.4(b)**). The same restriction was proposed in relation to the 14 days prior to the expiry of an acceptance condition invocation notice (an “**ACIN**”).

**(b) Respondents’ comments**

3.2 All but one of the respondents supported, or did not object to, the proposal.

3.3 One respondent acknowledged that offeree company shareholders may benefit from a “freeze” of the mandatory offeror’s control position but noted that this might have negative consequences for the liquidity of the shares in the offeree company.

3.4 The respondent who did not support the proposal considered that a sufficient rationale had not been put forward in the PCP to restrict a mandatory offeror from buying shares in the offeree company in the final 14 days of an offer period. The respondent noted that offeree company shareholders would be aware of the mandatory offeror’s control of the offeree company and of the possibility that this might be consolidated in the period up to the unconditional date.

3.5 Two respondents made drafting suggestions in relation to the proposed new **Rule 9.4(c)**.

**(c) Code Committee’s response**

3.6 The Code Committee continues to believe that a mandatory offeror, and any person acting in concert with it, should be restricted from acquiring additional interests in shares in the offeree company in the 14 days up to and including the unconditional date of an offer, and that the same restriction should apply in the 14 days prior to the expiry of an ACIN.

3.7 As explained in paragraph 3.11 of the PCP, a restriction on a mandatory offeror consolidating control of the offeree company in the 14 days up to and including the unconditional date is consistent with the restriction in **Note 4 on Rule 32.1** on a voluntary



offeror triggering an obligation to make a mandatory offer during this period. Although a voluntary offeror is able to acquire interests in shares in the offeree company during the 14 days up to and including the unconditional date (provided that it does not thereby trigger a requirement to revise its offer), it cannot acquire interests in shares through the 30% threshold (or increase its interest in the 30% to 50% band). Accordingly, in a voluntary offer, shareholders will know that a voluntary offeror will either:

- (a) be interested in shares which carry less than 30% of the voting rights of the offeree company (in the event that the offer lapses); or
- (b) hold shares which carry more than 50% of the voting rights of the offeree company (in the event that the offer is successful).

3.8 The size of the interest in the shares of the offeree company that a mandatory offeror will have in the event that the offer lapses could be significant to shareholders when making their acceptance decisions. For example, a shareholder may have a different view on whether to accept the offer depending on whether an unsuccessful offeror would have an interest of 31% in the offeree company or an interest of 49%. The amendment will restrict a mandatory offeror, and any person acting in concert with it, from acquiring additional interests in shares in the offeree company at the end of the offer period. This will mean that a mandatory offeror's "control" position will, in effect, be frozen from 14 days prior to the unconditional date until the outcome of the offer is known.

3.9 The Code Committee considers that the benefit of giving shareholders a period of stability and certainty in which to decide whether to accept an offer without the control position of the offeree company changing will outweigh any negative impact of a mandatory offeror not being able to purchase shares, or of shareholders not being able to sell shares to the mandatory offeror, in this specific period.

3.10 In response to drafting suggestions made by two respondents, the Code Committee has modified the new **Rule 9.4(c)** to make it more consistent with the new **Rule 9.4(b)**, as follows:

**“(c) Neither a voluntary offeror nor any person acting in concert with it may make an acquisition of any interest in shares which would oblige it to make an offer under Rule 9 unless that offer can remain open for acceptance for at least 14 days in the 14 days up to and including:**

**(i) the unconditional date; or**

**(ii) the expiry of an acceptance condition invocation notice.”**

**(d) Code amendments**

3.11 In the light of the above, the Code Committee has:

- (a) renumbered **Rule 9.4** as **Rule 9.4(a)**, as proposed in paragraph 3.18 of the PCP;
- (b) introduced the new **Rule 9.4(b)** and the new **Rule 9.4(c)**, as proposed in paragraph 3.18 of the PCP, subject to the modification set out in paragraph 3.10 above;
- (c) made minor amendments to **Note 9 on Rule 9.1**, the **Note on Rule 9.4** and **Note 4 on Rule 32.1**, as proposed in paragraph 3.19 of the PCP; and
- (d) renumbered the **Note on Rule 31.6** as **Note 1 on Rule 31.6** and introduced a new **Note 2 on Rule 31.6** to cross-refer to the new **Rule 9.4(b)**, as proposed in paragraph 3.19 of the PCP.

4. The “look-back period” for determining the price of a mandatory offer

**Q3** Should the new **Note 5 on Rule 9.5** be introduced as proposed in order to clarify the application of the “look-back period” for determining the minimum price of a mandatory offer?

**(a) Summary of proposals**

4.1 **Section 4** of the PCP proposed the introduction of a new **Note 5 on Rule 9.5** to clarify the application of the “look-back period” for determining the minimum price of a mandatory offer.

**(b) Respondents’ comments**

4.2 All of the respondents supported, or did not object to, the proposal.

**(c) Code amendments**

4.3 The Code Committee has introduced the new **Note 5 on Rule 9.5**, as proposed in paragraph 4.6 of the PCP.

## 5. The chain principle

- Q4** Should the test in limb (b) of Note 8 on Rule 9.1 be deleted such that the test in limb (a) would become the sole test for determining whether a chain principle offer is required, other than in exceptional circumstances?
- Q5** Should the threshold at which relative values would be considered to be “significant” for the purposes of the test currently set out in limb (a) of Note 8 on Rule 9.1 be reduced from 50% to 30%?

### (a) Summary of proposals

#### 5.1 Section 5 of the PCP proposed:

- (a) the deletion of the “significant purpose” test in limb (b) of **Note 8 on Rule 9.1**, such that the “significant interest” test in limb (a) of **Note 8 on Rule 9.1** would become the sole test for determining whether a “chain principle” mandatory offer is required, other than in exceptional circumstances; and
- (b) that the threshold at which relative values would be considered to be “significant” for the purposes of the “significant interest” test in limb (a) of **Note 8 on Rule 9.1** should be reduced from 50% to 30%.

### (b) Background

5.2 The rationale for requiring a chain principle offer is that if a person (“**Acquirer A**”) acquires shares which results in its holding more than 50% of the voting rights of a company (“**Company B**”) which has control of a company to which the Code applies (“**Company C**”), shareholders in Company C should benefit from any premium ascribed by Acquirer A to the value of the shareholding in Company C in calculating the price that Acquirer A is prepared to pay for the Company B shares. In addition, the identity and strategy of Acquirer A may have a material effect on the attractiveness of remaining as a shareholder in Company C once it is controlled by Acquirer A.

5.3 As explained in paragraph 5.5 of the PCP, the relevant provisions of the Code have always been cast as a presumption that a chain principle offer will not be required unless at least one of two tests of “significance” is satisfied. Currently, these tests are as follows:

- (a) the “**limb (a) test**” is satisfied if the shareholding which Company B has in Company C is “*significant*” in relation to Company B. In assessing significance, **Note 8 on Rule 9.1** stipulates that the Panel will consider factors including the assets, profits and market values of the respective companies, and that relative values of 50% or more will normally be regarded as significant; and

(b) the “**limb (b) test**” is satisfied if securing control of Company C “*might reasonably be considered to be a significant purpose*” of acquiring control of Company B. There is no guidance in the Code on how to interpret “*a significant purpose*” for the purposes of the limb (b) test.

5.4 As explained in paragraph 5.7 of the PCP, the limb (b) test has become the *de facto* key test as its relatively low threshold is likely to be satisfied in every case where the limb (a) test is also satisfied, and also in cases where it is not. Therefore, the limb (a) test has, in effect, become redundant. If the limb (b) test were to be deleted, the limb (a) test would become the sole test, and if the existing 50% threshold were to be retained, this would, in practice, narrow the circumstances in which a chain principle offer would be required. The proposed reduction of the threshold in limb (a) from 50% to 30% was therefore intended to balance the impact of the removal of the limb (b) test.

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

*(i) Introduction*

5.5 All of the respondents supported, or did not object to, the proposal to delete the limb (b) test.

5.6 All but one of the respondents supported, or did not object to, the proposal to reduce the threshold at which relative values would be considered to be “significant” for the purposes of the limb (a) test from 50% to 30%.

*(ii) Level of the limb (a) test threshold*

5.7 One respondent considered that the reduction of the limb (a) test threshold from 50% to 30% represented a tightening of the rules and suggested that the Panel should be prepared to exercise its discretion to adopt a higher threshold in appropriate cases.

5.8 The respondent who did not support the proposal to reduce the limb (a) test threshold from 50% to 30% considered that the extension of the chain principle beyond situations where the shareholding in Company C represents at least 50% of the value of Company B would amount to a major change. The respondent was also concerned that the shareholders in Company B would be disadvantaged because they would receive less value from Acquirer A once Acquirer A had factored into its acquisition price for Company B the price of a chain principle offer for Company C.

5.9 The Code Committee notes that, as a consequence of the relatively low threshold of the limb (b) test, the chain principle currently extends, in practice, to situations where the value of Company B’s shareholding in Company C is significantly less than 50% relative to the value of Company B. For this reason, the Code Committee does not consider that

the proposed lowering of the limb (a) test in conjunction with the abolition of the limb (b) test will, in practice, amount to a tightening of the rules in this area. As far as the Code Committee is aware, there are no previous cases where a chain principle offer would have been required under the amended test which would not have been required under the current tests, i.e. where the value of Company B's shareholding in Company C was 30% or more but less than 50% relative to the value of Company B and where the "significant purpose" test would also not have been satisfied.

- 5.10 The Code Committee agrees that, where Company B's shareholding in Company C is not significant in relation to Company B, it would be disproportionate to require a chain principle offer for Company C. However, the Code Committee considers that relative values of 50% or more would be too high for the purpose of determining whether the value of that shareholding is "significant" following the removal of the "significant purpose" test in limb (b).
- 5.11 As explained in paragraph 5.11 of the PCP, the Code Committee considers that a threshold of 30%, as the sole test other than in exceptional circumstances, strikes an appropriate balance between capturing transactions where Company C is likely to be significant to Acquirer A whilst at the same time not inappropriately impacting the value of Company B.
- 5.12 In response to a suggestion made by one respondent, the Code Committee has modified the drafting of **Note 8 on Rule 9.1**, as follows:

**"8. The chain principle**

*If a person or group of persons acting in concert ("Acquirer A") acquires shares in a company ("Company B") which results in Acquirer A holding over 50% of the voting rights of Company B (which may or may not be a company to which the Code applies), Acquirer A may thereby indirectly obtain or consolidate control, as defined in the Definitions Section, of a second company ("Company C") because Company B either:*

- (a) *controls Company C; or*
- (b) *is interested in shares in Company C which, when aggregated with those in which Acquirer A is already interested, will result in Acquirer A obtaining or consolidating control of Company C.*

*The Panel will normally only require an offer to be made under Rule 9 in these circumstances if ~~the Company B's interest in shares in Company C which Company B has in Company C~~ is significant in relation to Company B. In assessing this, the Panel will take into account a number of factors including, as appropriate, the assets, profits and market values of the respective companies. Relative values of 30% or more will normally be regarded as significant."*

(iii) *Spin-off companies*

- 5.13 One respondent expressed concern as to the potential unintended consequences of the proposals to delete the limb (b) test and amend the limb (a) test. In particular, the respondent noted that Company B may divest its non-core operations by way of a spin-off and retain a minority position in a new company (i.e. Company C). The respondent was concerned that the proposals could mean that if Acquirer A made an offer for Company B, it would also be required to make an offer for the spun-off Company C, and asked how the amended chain principle would apply in such circumstances.
- 5.14 The Code Committee considers that it would be unusual for the retained interest in Company C to represent 30% or more of the value of Company B and considers that, in such circumstances, the Panel should be consulted as to the requirement for a chain principle offer to be made.

(d) *Code amendments*

- 5.15 In the light of the above, the Code Committee has adopted the amendments to **Note 8 on Rule 9.1**, as proposed in paragraph 5.14 of the PCP, subject to the modification set out in paragraph 5.12 above.

## 6. Restrictions following the lapsing of an offer or a statement of no intention to bid

**Q6 Should Note 1 on Rules 35.1 and 35.2, Note 2 on Rule 2.5 and Note 2 on Rule 2.8 be amended as proposed in relation to the restrictions following the lapsing of an offer or a statement of no intention to bid?**

### (a) *Summary of proposals*

6.1 **Section 6** of the PCP proposed amendments to:

- (a) **Note 1(a) on Rules 35.1 and 35.2**, with regard to the circumstances in which an offeror that made a “no increase statement” or an “acceleration statement” in relation to an offer which subsequently lapsed can proceed to make a new offer even though the offeror did not reserve the right to set that statement aside with the agreement of the offeree board;
- (b) **Note 2 on Rule 2.5** and **Note 2 on Rule 2.8**, with regard to the period of time for which a potential offeror should be bound by a statement as to the terms on which a possible offer might be made; and
- (c) **Note 1(b) on Rules 35.1 and 35.2**, with regard to the circumstances in which an offeror whose offer has lapsed can proceed to make a new offer if a third party announces a firm intention to make an offer for the offeree company.

### (b) *Respondents’ comments*

6.2 The respondents supported, or did not object to, the proposals.

### (c) *Code Committee’s response*

6.3 In response to a suggestion made by one respondent, the Code Committee has introduced the words “under this paragraph (a)” into the new **Note 1(a) on Rules 35.1 and 35.2**, in order to clarify that the “freeze” period referred to in paragraph (a) applies where the Panel’s consent is sought under paragraph (a), but not where it is sought under paragraphs (b), (c) or (d). **Notes 1(a) and (b)** will therefore read as follows<sup>1</sup>:

**“1. When consent may be given**

*The Panel will normally only give its consent under Rule 35.1 if:*

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<sup>1</sup> NB Notes 1(a) and (b) as set out in paragraph 6.3 are marked to show changes from the current provisions of the Code, rather than the provisions as they were proposed to be amended in the PCP.



~~(a) 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 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; Where the offeror made a no increase statement or an acceleration statement without a reservation of the right to set the statement aside with the agreement of the offeree board, the Panel will not normally give its consent under this paragraph (a) in relation to a new offer, or any other transaction restricted by Rule 35.1, on more favourable terms than those available under the previous offer until after the later of:~~

~~(i) three months from the date on which the previous offer was withdrawn or lapsed; and~~

~~(ii) the end of the offer period;~~

~~(b) a third party (including a potential offeror which had been publicly identified prior to the date on which the previous offer was withdrawn or lapsed) announces a firm intention to make an offer for the offeree company;”.~~

**(d) Code amendments**

6.4 In the light of the above, the Code Committee has:

- (a) amended **Notes 1(a) and (b) on Rules 35.1 and 35.2**, as set out in paragraph 6.3 above; and
- (b) amended **Note 2 on Rule 2.5** and **Note 2(d) on Rule 2.8**, as proposed in paragraph 6.35 of the PCP.

6.5 In addition, for the reason explained in paragraph 7.16 below, the Code Committee has:

- (a) renamed the **Notes on Rule 35.1 and 35.2** as the **Notes on Rule 35.1**;
- (b) moved the renamed **Notes on Rule 35.1** to immediately after **Rule 35.1**; and
- (c) made minor related amendments to **Rule 31.5(f)** and **Rule 32.2(c)**,

as set out in **Appendix B**.

## 7. Minor issues

**Q7 Should the minor amendments to the Code set out in Section 7 of the PCP be adopted as proposed?**

### (a) Summary of proposals

7.1 **Section 7** of the PCP proposed various minor amendments in relation to:

- (a) the application of the definition of “**interests in securities**” to custodians and depositories;
- (b) the wording of **Rule 9.1(a)**;
- (c) the requirement for a “Rule 9 waiver” circular to include the offeree board’s opinion on the offeror’s plans;
- (d) the disclosure of ratings and outlooks under **Rule 24.3**;
- (e) the timing of the publication of documents on a website;
- (f) the removal of the requirement for the parties to an offer to send documents to the Panel and advisers in hard copy form; and
- (g) the default auction procedure under **Appendix 8** of the Code.

7.2 It was also proposed to replace references in the Code to the term “whitewash” with references to the term “Rule 9 waiver” and to make the other minor related amendments.

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

#### (i) Introduction

7.3 The respondents supported, or did not object to, the proposals in **Section 7** of the PCP.

#### (ii) Application of the definition of “interests in securities” to custodians and depositories

7.4 In relation to the new **Note 10 on the definition of “interests in securities”** proposed in **Section 7(a)** of the PCP, one respondent noted that a custodian may not necessarily be a bank.

7.5 In the light of the above, the Code Committee has amended the new **Note 10 on the definition of “interests in securities”** as follows:

**“10. Custodians and depositories**

*A ~~bank acting as a custodian or depository~~ acting in the normal course of its business will not be treated as having an interest in the securities it holds as a result of that activity.”.*

(iii) *Timing of the publication of documents on a website*

7.6 **Section 7(e)** of the PCP proposed minor amendments so as to make clear that each of an offer document, an offeree board circular, a revised offer document and an offeree board circular on a revised offer should be published on a website in accordance with the requirements of **Rule 26.1(a)**, rather than “*promptly following its publication*”. Consequential amendments were also proposed to **Rule 32.1** and **Rule 32.6** in relation to the time by which a revised offer document or offeree board circular on a revised offer must be made available to employee representatives and to the pension scheme trustees.

7.7 In relation to the proposed amendments to **Rule 32.1** and **Rule 32.6**, one respondent suggested that, rather than an offeror or an offeree board being required to make documents available to employee representatives and pension scheme trustees “*at the same time*” as the publication of a revised offer document or the circular on the revised offer, it would be more appropriate to require the relevant documents to be made available to those persons “promptly” following their publication.

7.8 The Code Committee notes that (broadly):

(a) under paragraph 12(3) of Schedule 1C to the Companies Act 2006 (the “**Act**”), the Code must ensure that, when the offer document is made public, the boards of directors of the offeree company and the offeror must communicate it to their employee representatives; and

(b) under paragraph 16 of Schedule 1C, the Code must ensure that an offer document is made “readily and promptly available” to the employee representatives.

7.9 In order to make the provisions more consistent with the requirements of paragraphs 12(3) and 16 of Schedule 1C to the Act, the Code Committee has modified the amendments to **Rule 32.1** and **Rule 32.6** to provide that “when” a revised offer document or circular is published, it must be made readily and promptly available to the employee representatives and the pension scheme trustees.

7.10 The Code Committee has therefore:

(a) modified the proposed amendments to **Rule 32.1**, as follows:

**“32.1 PUBLICATION OF REVISED OFFER DOCUMENT**

(a) If an offer is revised, a revised offer document, drawn up in accordance with Rules 24 and Rule 27, must be sent to shareholders of the offeree company and persons with information rights. In addition, the offeror must:

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

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

(b) ~~At the same time as the~~ When a revised offer document is published:

(i) both the offeror and the offeree company must make the revised offer document readily and promptly available to their employee representatives (or, where there are no employee representatives, to the employees themselves);

(ii) the offeror must make the revised offer document readily and promptly available to the trustees of the offeree company’s pension scheme(s); and”; and

(b) modified the proposed amendments to **Rule 32.6**, as follows:

**“32.6 THE OFFEREE BOARD’S OPINION AND THE OPINIONS OF THE EMPLOYEE REPRESENTATIVES AND THE PENSION SCHEME TRUSTEES**

(a) The board of the offeree company must send to the company’s shareholders and persons with information rights a circular containing its opinion on the revised offer as required by Rule 25.1, drawn up in accordance with Rules 25 and Rule 27. In addition, the offeree company must:

(i) publish the circular on a website in accordance with Rule 26.1; and

(ii) announce that the circular has been published.

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

(iv) *The default auction procedure under Appendix 8 of the Code*

7.11 **Section 7(g)** of the PCP proposed the introduction of a new **Section 2(c) of Appendix 8** to clarify that, in a default auction procedure, if one competing offeror makes a no increase statement either on the day prior to Day 46 or on Day 46 but before 5.00 pm, the other competing offeror (which had not made a no increase statement) would be allowed to announce a revised offer on Auction Day 1 in accordance with **Section 3(a) of Appendix 8**.

- 7.12 One respondent suggested some minor drafting changes to the proposed new **Section 2(c) of Appendix 8**. These reflected the respondent's view that the auction procedure would have no continuing relevance if one of the competing offerors made a no increase statement prior to 5.00 pm on Day 46.
- 7.13 The Code Committee notes that the principal objectives of the auction procedure are to provide both finality and an orderly resolution of a competitive situation. The Code Committee considers that the auction procedure will therefore continue to have relevance if one of the competing offerors makes a no increase statement either on the day prior to Day 46 or on Day 46 (before 5.00 pm). In such circumstances, there will continue to be two competing offerors (albeit that one will have declared its offer final), a competitive situation will continue to exist and any revised offer announced after 5.00 pm on Day 46 should therefore be announced in accordance with the auction procedure. Accordingly, the Code Committee considers that it is appropriate for the new **Section 2(c) of Appendix 8** to refer to the date by which the competing offeror which has not made a no increase statement may announce a revised offer as "Auction Day 1" (i.e. a date within the auction procedure).

**(c) Code amendments**

- 7.14 In the light of the above, the Code Committee has adopted:
- (a) the new **Note 10 on the definition of "interests in securities"**, as proposed in paragraph 7.4 of the PCP, subject to the modification set out in paragraph 7.5 above;
  - (b) the amendments to **Rule 9.1(a)**, as proposed in paragraph 7.7 of the PCP;
  - (c) the amendments to **Rule 24.1(c), Rule 25.1(c), Note 1 on Rule 25.9, Rule 32.1** and **Rule 32.6**, as proposed in paragraph 7.20 of the PCP, subject to the modifications to **Rule 32.1** and **Rule 32.6** set out in paragraph 7.10 above;
  - (d) the amendments to **Rule 24.3(c)**, as proposed in paragraph 7.16 of the PCP;
  - (e) the amendments to **Rule 30.5(a), Rule 30.5(b), Section 2(f) of Appendix 5** and **Section 4 of Appendix 5**, as set out in paragraph 7.25 of the PCP;
  - (f) the amendments to **Section 4(j) of Appendix 1**, as proposed in paragraph 7.11 of the PCP; and
  - (g) the new **Section 2(c) of Appendix 8** (and has renumbered the current paragraphs **(c)** to **(j)** as paragraphs **(d)** to **(k)** accordingly), as proposed in paragraphs 7.31 and 7.32 of the PCP.

- 7.15 As proposed in paragraphs 7.12 and 7.13 of the PCP, the Code Committee has replaced the term “whitewash” with the term “Rule 9 waiver” in, and made other related amendments to, the following provisions: **Note 2(a) on Rule 2.8; Note 4 on Rule 5.1 and Note 2 on Rule 5.3; Rule 7.3; Notes 1, 6, 10 and 11 on Rule 9.1; Notes 1, 2, 3, 5 and 6 of the Notes on Dispensations from Rule 9; Notes 3 and 4 on Rule 21.2; Rule 36.6; Rule 37.1 and Notes 3, 5, 6 and 7 on Rule 37.1; and Appendix 1.**
- 7.16 In addition, in order to introduce greater consistency to the headings and numbering of the provisions of the Code, the Code Committee has deleted the headings of the lettered sections of the Code and made formatting and consequential minor amendments to **Rules 1, 2.9, 3.1, 4, 7, 9, 10, 14, 15, 16.1, 18, 19, 21.3, 22, 23, 28, 29, 30, 31, 35, 36, 37 and 38** and to **Appendices 1, 2, 4 and 5**, as set out in **Appendix B**. As these amendments do not materially alter the effect of the provisions in question, they have been made without consultation.

**APPENDIX A****Non-confidential respondents to PCP 2021/1**

1. Herbert Smith Freehills LLP
2. Institute of Chartered Accountants in England and Wales
3. Joint Working Party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales
4. Quoted Companies Alliance
5. UK Finance

## APPENDIX B

## Amendments to the Code

## DEFINITIONS

## Acting in concert

...

**NOTES ON ACTING IN CONCERT**

...

**11. Indemnity and other dealing arrangements**

...

**(b) ...**

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

...

## Interests in securities

...

**NOTES ON INTERESTS IN SECURITIES**

...

**10. Custodians and depositories**

*A custodian or depository acting in the normal course of its business will not be treated as having an interest in the securities it holds as a result of that activity.*

## Rule 1

## RULES

**SECTION D. THE APPROACH, ANNOUNCEMENTS AND INDEPENDENT ADVICE****RULE 1. THE APPROACH****1.1 NOTIFICATION OF OFFEREE BOARD**

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

**1.2 IDENTITY OF THE OFFEROR**

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



## Rule 2.4

### 2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

...

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

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

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

(iii) details of any minimum level, or particular form, of consideration that any potential offeror(s) identified in the announcement would be obliged to offer under Rule 6 or Rule 11 (as appropriate); and

(iv) details of any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert to which the offeree company or a potential offeror identified in the announcement is a party. See also Note 6(b) on Rule 8.

#### NOTES ON RULE 2.4

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

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

##### **1. Announcement made without the agreement or approval of a potential offeror**

If an announcement is made by the offeree company without the agreement or approval of a potential offeror:

(a) the announcement is not required to include the matters referred to in Rule 2.4(c)(iii) and (iv), insofar as they relate to the potential offeror; and

(b) any potential offeror identified in the announcement must make a further announcement specifying the matters referred to in Rule 2.4(c)(iii) and (iv) (as appropriate) as soon as practicable thereafter.

##### **~~2. Indemnity and other dealing arrangements~~**

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

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

## **2. Minimum level, or particular form, of consideration**

Where a potential offeror to which Rule 2.4(c)(iii) applies considers that an adjustment should be made under Note 1 on Rule 6 or under Rule 11.3, the Panel must be consulted as to the terms of the announcement.

...

## **4. Persons acting in concert with a potential offeror**

It may not be practicable for a potential offeror to make enquiries of all persons acting in concert with it prior to the announcement being made in order to confirm whether any details are required to be disclosed under Rule 2.4(c)(iii). In such circumstances, this fact should be stated and any relevant details should be announced as soon as practicable and in any event by no later than the deadline for the potential offeror's Opening Position Disclosure (see Note 2(a)(i) on Rule 8). The Panel should be consulted in all such cases.

## **Rule 2.5**

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

...

#### **NOTES ON RULE 2.5**

...

### **2. Duration of restriction**

~~The restrictions imposed by Rule 2.5(a) will normally apply throughout the period during which the offeree company is in an offer period and for a further three months thereafter, until the later of:~~

(a) three months from the date on which the potential offeror makes a statement to which Rule 2.8 applies; and

(b) the end of the offer period.

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

See also Rule 2.8(f).

## **Rule 2.7**

### **2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER**

...

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

...

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

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

### **Rule 2.8**

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

...

#### **NOTES ON RULE 2.8**

...

#### **2. Setting aside a statement to which Rule 2.8 applies**

(a) *The circumstances that a person is permitted to specify in a statement to which Rule 2.8 applies as circumstances in which the statement may be set aside are:*

...

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

...

(d) *Where the statement to which Rule 2.8 applies is made by a potential offeror which has made a statement to which Rule 2.5(a)(i) or (ii) applies and which did not reserve the right not to be bound by that statement with the agreement of the board of the offeree company, the board of the offeree company may not, except with the consent of the Panel, agree to the restrictions in Rule 2.8(f) being set aside ~~for~~ until the later of:*

*(i) three months following the date on which the statement to which Rule 2.8 applies is made; and*

*(ii) the end of the offer period.*

### **Rule 2.9**

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

**(a)** When an offer period begins ...

**(b)** Any such announcement should include ...

**(c)** If the information included ...

### Rule 3.1

#### 3.1 BOARD OF THE OFFEREE COMPANY

The board of the offeree company must obtain competent independent advice as to whether the financial terms of any offer (including any alternative offers) are fair and reasonable and the substance of such advice must be made known to its shareholders. (See also Rule 15**(b)**.2 and Rule 21.1(d)(i).)

### Rule 4

#### ~~SECTION E. RESTRICTIONS ON DEALINGS~~

#### RULE 4. RESTRICTIONS ON DEALINGS

...

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

During the offer period, ... except with the consent of the Panel:

- (~~ia~~) either for its own account or ...
- (~~ib~~) make any loan to a person to assist the person ...
- (~~ic~~) enter into any indemnity or option arrangement ...

#### **NOTE ON RULE 4.4**

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

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

### Rule 5

#### 5.1 RESTRICTIONS

...

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

...

#### **4. ~~"Whitewashes"~~ Rule 9 waivers**

~~This Rule 5.1 does not prohibit a person from obtaining an interest in shares carrying 30% or more of the voting rights in accordance with Note 1 of the Notes on Dispensations from Rule 9.~~

...

### 5.3 ACQUISITIONS FROM A SINGLE SHAREHOLDER – CONSEQUENCES

...

#### NOTES ON RULE 5.3

...

#### 2. *Rights or scrip issues and “whitewashes” Rule 9 waivers*

*The restrictions imposed by ~~this~~ Rule 5.3 do not prevent a person from receiving an entitlement of shares through a rights or scrip issue as long as the person does not increase the percentage of shares carrying voting rights in which it is interested. Nor do they prevent a person from acquiring further interests in shares in accordance with the Notes on Dispensations from Rule 9.*

## Rule 6

### 6.1 ACQUISITIONS BEFORE A FIRM OFFER ANNOUNCEMENT

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

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

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

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

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

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

**(c)** In the case of an acquisition under Rule 6.1(a)(ii) paragraph (b), an immediate announcement may be required in accordance with ~~the Note on~~ Rule 7.1.

### 6.2 ACQUISITIONS AFTER A FIRM OFFER ANNOUNCEMENT

...

**(b)** ~~Immediately after the acquisition, the offeror must announce that a revised offer will be made in accordance with this Rule (see also Rule 32). Whenever practicable, the announcement should also state the nature of the interest, the number of shares concerned and the price paid.~~ an appropriate announcement must be made in accordance with Rule 7.1.

## Rule 7

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

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

7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF AN OBLIGATION UNDER RULE 6, 9 OR 11 IS TRIGGERED

(a) During an offer period, a potential offeror (see Note) must make an immediate announcement if it, or any person acting in concert with it, acquires an interest in shares in the offeree company and, as a result of that or any previous acquisition, the potential offeror would be obliged to offer a minimum level, or a particular form, of consideration under Rule 6 or Rule 11 which has not previously been announced.

(b) After it has announced a firm intention to make an offer, an offeror must make an immediate announcement if it, or any person acting in concert with it, acquires an interest in shares in the offeree company and, as a result, the offeror is obliged to revise its offer under Rule 6, Rule 9.5 or Rule 11 or to make a mandatory offer under Rule 9.1.

(c) Any announcement required under Rule 7.1(a) or (b) must state:

(i) the relevant obligation;

(ii) the nature of the interest in shares that has been acquired and the number of shares concerned; and

(iii) the highest price paid.

A Dealing Disclosure will also be required in accordance with Rule 8.1(b) or Rule 8.4 (as appropriate).

**NOTE ON RULE 7.1****Potential offerors**

~~The requirement of this Rule 7.1(a) to make an immediate announcement applies to any potential offeror whose existence has been referred to in any announcement (whether publicly identified or not), or which is a participant in a formal sale process (regardless of whether it was a participant at the time at which the formal sale process was announced). See also Note 12(a) on Rule 8, either:~~

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

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

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

...

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

...

### **NOTES ON RULE 7.2**

...

#### **4. Dealings by discretionary fund managers**

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

...

## **7.3 PARTIAL OFFERS AND “WHITEWASHES” RULE 9 WAIVERS**

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

## **Rule 8**

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

...

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

...

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

...

~~(b) Where the offeree company has entered into such a dealing arrangement before the start of the offer period or an offeror has entered into such a dealing arrangement before the announcement that first identifies it as an offeror, details of the arrangement must be included in the announcement that commences the offer period or the announcement that first identifies the offeror (as the case may be).~~

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

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

...

## 12. Potential offerors

(a) ...

At the same time as or before any such Dealing Disclosure, the potential offeror must also make an announcement that it is considering making an offer, or that it is a participant in the formal sale process (see also ~~the Note on Rule 7.1(a)~~ for when an immediate announcement will be required). The announcement must include a summary of the provisions of Rule 8 (see [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)).

(b) If a potential offeror has not been identified as such, it will not need to make an Opening Position Disclosure under Rule 8.1(a)(i) or (ii) until after the announcement that first identifies it as an potential offeror. ...

## Rule 9

### ~~SECTION F. THE MANDATORY OFFER AND ITS TERMS~~

#### RULE 9. THE MANDATORY OFFER AND ITS TERMS

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

Except with the consent of the Panel, when:

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

...

such person shall extend offers ...

...



## NOTES ON RULE 9.1

...

### 1. Coming together to act in concert

Acting in concert requires the co-operation of two or more persons. When a person has acquired an interest in shares without the knowledge of other persons with whom that person subsequently comes together to co-operate as a group to obtain or consolidate control of a company, and the shares in which they are interested at the time of coming together carry 30% or more of the voting rights in that company, the Panel will not normally require an ~~an general~~ offer to be made under ~~this Rule 9~~. Such persons having once come together, however, the provisions of the Rule will apply so that:

...

### 6. Vendor of part only of an interest in shares

Shareholders sometimes wish to sell part only of their shareholdings or a purchaser may be prepared to purchase part only of a shareholding. This arises particularly where a purchaser wishes to acquire shares carrying just under 30% of the voting rights in a company, thereby avoiding an obligation ~~under this Rule~~ to make an ~~an general~~ offer under Rule 9. The Panel will be concerned to see whether in such circumstances the vendor is acting in concert with the purchaser and/ or has effectively allowed the purchaser to acquire a significant degree of control over the shares retained by the vendor such that the purchaser should be treated as having acquired an interest in them by virtue of paragraph (2) of the definition of interests in securities, in which case an ~~an general~~ offer under Rule 9 would normally be required. A judgement on whether such significant degree of control exists will obviously depend on the circumstances of each individual case. In reaching its decision, the Panel will have regard, inter alia, to the points set out below.

...

(d) It would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas as regards the way the company is to be directed are reasonably compatible with the vendor's own. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, divorced from any other evidence of a significant degree of control over the retained shares, would not lead the Panel to conclude that an ~~an general~~ offer under Rule 9 should be made.

...

### 8. The chain principle

~~Occasionally, if a person or group of persons acting in concert ("Acquirer A") acquires shares in a company ("Company B") which results in a Acquirer A holding of over 50% of the voting rights of a Company B (which need may or may not be a company to which the Code applies), Acquirer A will may thereby indirectly acquire obtain or consolidate control, as defined in the Code Definitions Section, of a second company ("Company C") because the first Company B either:~~

~~(a) itself is interested, either directly or indirectly through intermediate companies, in a controlling block of shares in the second controls Company C; or~~

~~(b) is interested in shares in Company C which, when aggregated with those in which the person or group Acquirer A is already interested in, secure or will result in Acquirer A obtaining or consolidating control of the second Company C.~~

~~The Panel will not normally only require an offer to be made under this Rule 9 in these circumstances unless either: (a) — if Company B's the interest in shares in Company C which the first company has in the second company is significant in relation to the first Company B. In assessing this, the Panel will take into account a number of factors including, as appropriate, the assets, profits and market values of the respective companies. Relative values of 530% or more will normally be regarded as significant; or~~

~~(b) — securing control of the second company might reasonably be considered to be a significant purpose of acquiring control of the first company.~~

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

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

~~(a) — If it is proposed to incur an obligation to make an offer under this Rule 9 during the course of a non-mandatory voluntary offer, the Panel must be consulted in advance.~~

~~(b) — Once If such an obligation is incurred, an offer in compliance with this Rule 9 must be announced immediately. (See see also Rule 7.1-).~~

~~(c) — Where there is no change in the consideration is involved offered, a revised offer document will not be required and it will be sufficient, following the announcement, simply to send a notification to offeree company shareholders and persons with information rights setting out:~~

~~(i) — the new number percentage of shares in which the offeror and persons acting in concert with it are interested;~~

~~(ii) — 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.~~

~~(iii) — the unconditional date.~~

~~(d) — An The offer made in compliance with this Rule 9 must remain open for not less than 14 days following the publication of the date on which the revised offer document or the sending of the notification referred to in paragraph (c) (as appropriate) is published and as required by Rules 31.2 and 33.1.~~

~~(e) — Rule 9.4(c) and Notes 3 and 4 on Rule 32.1 set out certain restrictions on the incurring of an obligation under this Rule 9 during the offer period.~~

## **10. Convertible securities, warrants and options**

~~In general, the acquisition of securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares does not give rise to an obligation under this Rule to make an general offer under Rule 9 but the exercise of any conversion or subscription rights or options will be considered to be an acquisition of an interest in shares for the purpose of the Rule.~~

...

## **11. The reduction or dilution of interests in shares**

~~If a person or a group of persons acting in concert interested in shares carrying more than 30% of the voting rights of a company reduces its interest but not to less than 30%, such person or persons may subsequently acquire an interest in further shares without~~

incurring an obligation to make an ~~general~~ offer under Rule 9 subject to both of the following limitations:

...

If a shareholding has remained above 50% of the voting rights of a company, or is restored to more than 50% by acquisitions permitted under this Note, further acquisitions are unrestricted by the Rule. Otherwise, a percentage interest in shares carrying voting rights of more than 30% which is reduced or diluted may not be restored to its original level without giving rise to an obligation to make an ~~general~~ offer under Rule 9 except as permitted under this Note. However, nothing in this Note affects or restricts subscriptions for new shares approved by independent shareholders in the manner outlined in Note 1 of the Notes on Dispensations from Rule 9.

...

#### **9.4 RESTRICTIONS ON ACQUISITIONS**

**(a)** 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.

**(b)** Where an offer has been made under Rule 9, neither the offeror nor any person acting in concert with it may acquire any interest in shares in the offeree company in the 14 days up to and including:

**(i)** the unconditional date; or

**(ii)** the expiry of an acceptance condition invocation notice.

**(c)** Neither a voluntary offeror nor any person acting in concert with it may make an acquisition of any interest in shares which would oblige it to make an offer under Rule 9 in the 14 days up to and including:

**(i)** the unconditional date; or

**(ii)** the expiry of an acceptance condition invocation notice.

#### **NOTE ON RULE 9.4**

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

*(a) The Panel will normally only grant a dispensation under Rule 9.4(a) 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.*

...

#### **9.5 CONSIDERATION TO BE OFFERED**

...

#### **NOTES ON RULE 9.5**

...

## **5. “Look-back period”**

If, notwithstanding Rule 2.2(b), an offer under Rule 9.1 was not announced immediately following the acquisition of the interest in shares which gave rise to the obligation to make the offer, the “look-back period” in Rule 9.5(a) will start on the date which is 12 months prior to the date on which such offer ought to have been announced in accordance with Rule 2.2(b) and will end on the date on which the offer is announced. The same approach will apply to the 12 month periods referred to in Notes 2 and 3 on Rule 9.5.

...

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

### **1. ~~Vote of independent shareholders on the issue of new securities (“Whitewash”)- Rule 9 waivers~~**

(See also Appendix 1 for Guidance Note)

~~When the issue of new securities as consideration for an acquisition or a cash subscription (or in fulfilment of obligations under an agreement to underwrite the issue of new securities) would otherwise result in an obligation to make an general offer under this Rule 9, the Panel will normally waive the obligation if there is an independent vote at a shareholders’ meeting. The requirement for a general offer will also be waived, provided there has been a vote of independent shareholders, in cases involving the underwriting of an issue of shares. If an underwriter incurs an obligation under this Rule unexpectedly, for example as a result of an inability to sub-underwrite all or part of its liability, the Panel should be consulted.~~

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

~~When a person or group of persons acting in concert may, as a result of such arrangements, come to hold shares carrying more than 50% of the voting rights of the company, specific and prominent reference to the possibility must be contained in the document and to the fact that the person or group will be able to acquire interests in further shares without incurring any further obligation under Rule 9 to make a general offer.~~

~~When a waiver has been granted, as described above, in respect of convertible securities, options or rights to subscribe for shares, details, including the fact of the waiver and the maximum number of securities that may be issued as a result, should be included in the company’s annual report and accounts until the securities in respect of which the waiver has been granted have been issued or it is confirmed that no such issue will be made.~~

~~Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company:~~

~~(a) — the Panel will not normally waive an obligation under this Rule if the person to whom the new securities are to be issued or any persons acting in concert with that person have acquired any interest in shares in the company in the 12 months prior to the publication of the circular relating to the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;~~

~~(b) — a waiver will be invalidated if any acquisitions of interests in shares are made in the period between the publication of the circular and the shareholders' meeting.~~

~~In exceptional circumstances, the Panel may consider waiving the requirement for a general offer granting a Rule 9 waiver where the approval of independent shareholders to the transfer of existing shares from one shareholder to another is obtained.~~

See also Note 5(c).

## **2. Enforcement of security for a loan**

~~Where shares or other securities are charged as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make an general offer under this Rule 9, the Panel will not normally require an offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with the lender, so that the percentage of shares carrying voting rights in which the lender, together with persons acting in concert with it, is interested is reduced to below 30% in a manner satisfactory to the Panel. (See also Rule 9.7.)~~

...

## **3. Rescue operations**

~~There are occasions when a company is in such a serious financial position that the only way it can be saved is by an urgent rescue operation which involves the issue of new shares without approval by a vote of independent shareholders or the acquisition of existing shares by the rescuer which would otherwise ~~fall within the provisions of this Rule and normally~~ require an general offer under Rule 9. The Panel may, however, waive the requirements of the Rule in such circumstances provided that either:~~

~~(a) approval for the rescue operation by a vote of independent shareholders is obtained as soon as possible after the rescue operation is carried out; or~~

~~(b) some other protection for independent shareholders is provided which the Panel considers satisfactory in the circumstances.~~

~~Where neither the approval of independent shareholders nor any other form of protection can be provided, an general offer under this Rule 9 will be required. In such circumstances, however, the Panel may consider an adjustment of the highest price, pursuant to Note 3 on Rule 9.5.~~

~~The requirements of ~~the~~ Rule 9 will not normally be waived in a case where a major shareholder in a company rather than that company itself is in need of rescue. The situation of that shareholder may have little relevance to the position of other shareholders and, therefore, the purchaser from such major shareholder must expect to be obliged to extend an offer under ~~the~~ Rule 9 to all other shareholders.~~

...

## **5. Shares carrying 50% or more of the voting rights**

~~The Panel will consider waiving the requirement for an general offer under ~~this~~ Rule 9 where:~~

...

(c) *in the case of an issue of new securities, independent shareholders holding shares carrying more than 50% of the voting rights of the company which would be capable of being cast on a “whitewash” Rule 9 waiver resolution (see Note 1) confirm in writing that they approve the proposed waiver and would vote in favour of any resolution to that effect at a general meeting.*

## **6. Enfranchisement of non-voting shares**

*There is no requirement to make an ~~general~~ offer under ~~this~~ Rule 9 if a person interested in non-voting shares becomes upon enfranchisement of those shares interested in shares carrying 30% or more of the voting rights of a company, except where shares or interests in shares have been acquired at a time when the person had reason to believe that enfranchisement would take place.*

## **Rule 10**

### **SECTION G. THE VOLUNTARY OFFER AND ITS TERMS**

#### **RULE 10. THE ACCEPTANCE CONDITION\***

## **Rule 11**

### **11.1 WHEN A CASH OFFER IS REQUIRED**

...

#### **NOTES ON RULE 11.1**

...

### **6. Revision**

*If an obligation under this Rule arises during the course of an offer period and a revision of the offer is necessary, an immediate announcement must be made by the offeror in accordance with Rule 7.1 (~~but see Rule 32~~). ~~The Note on Rule 7.1~~ may also be relevant to acquisitions by potential offerors.*

...

### **11.2 WHEN A SECURITIES OFFER IS REQUIRED**

**(a)**      Where interests in shares ...

**(b)**      Unless the vendor or other party to the transaction ...

#### **NOTES ON RULE 11.2**

### **1. Basis on which securities are to be offered**

*Any securities required to be offered pursuant to ~~this~~ Rule 11.2 must be offered ...*

## Rule 14

**SECTION H. PROVISIONS APPLICABLE TO ALL OFFERS****RULE 14. WHERE THERE IS MORE THAN ONE CLASS OF SHARE CAPITAL****14.1 COMPARABLE OFFERS**

- (a)** Where a company has more than one ...
- (b)** An offer for non-voting equity share capital ...
- (c)** Classes of non-voting, non-equity share capital ...

## Rule 15

**RULE 15. APPROPRIATE OFFER FOR CONVERTIBLES ETC. SECURITIES, OPTIONS AND SUBSCRIPTION RIGHTS****15.1 APPROPRIATE OFFER OR PROPOSAL**

**(a)**—When an offer is made for voting equity share capital or for other transferable securities carrying voting rights and the offeree company has convertible securities, options or subscription rights (“Rule 15 securities”) outstanding, the offeror must make an appropriate offer or proposal to the stockholders—holders of those Rule 15 securities to ensure that their interests are safeguarded. Equality of treatment is required.

**15.2 INDEPENDENT ADVICE AND VIEWS OF THE OFFEREE BOARD**

**(b)**—The board of the offeree company must obtain competent independent advice on the offer or proposal ~~to the stockholders~~ and the substance of such advice must be made known to the holders of the Rule 15 securities—its ~~stockholders~~, together with the board’s views on the offer or proposal.

**15.3 PUBLICATION OF OFFER OR PROPOSAL**

**(c)**—Whenever practicable, the offer or proposal should be sent to ~~stockholders~~ holders of Rule 15 securities at the same time as the offer document is published but, if this is not practicable, the Panel should be consulted and the offer or proposal should be sent as soon as possible thereafter. A copy of the offer or proposal should be sent to the Panel at the time of publication.

**15.4 CONDITIONALITY OF THE OFFER OR PROPOSAL**

**(d)**—The offer or proposal ~~to stockholders~~ required by this Rule should not normally be made conditional on any particular level of acceptances. It may, however, be put by way of a scheme to be considered at a ~~stockholders’~~ meeting of holders of Rule 15 securities provided that, if the scheme is not approved at that meeting, or is not sanctioned by the court, the offeror shall immediately make an offer or proposal ~~to stockholders~~ which is not conditional on any particular level of acceptances or approval.

**(e)**—~~If an offeree company has options or subscription rights outstanding, the provisions of this Rule apply mutatis mutandis.~~

## NOTES ON RULE 15

### 1. **When conversion rights etc. are exercisable during an offer**

*All relevant documents, announcements and other information sent to shareholders of the offeree company and persons with information rights in connection with an offer must also, where practicable, be sent simultaneously to the holders of securities convertible into, rights to subscribe for and options over shares of the same class as those to which the offer relates. If those holders of Rule 15 securities are able to exercise their rights during the course of the offer and to accept the offer in respect of the resulting shares, their attention should, where appropriate, be drawn to this in the relevant documents, announcements and other information.*

### 2. **Rules 9 and 14**

*If an offer for any convertible securities is required by Rule 9 or Rule 14, compliance with the relevant Rule will be regarded as satisfying the obligation in Rule 15(a).1 in respect of those securities.*

## Rule 16.1

### 16.1 SPECIAL DEALS WITH FAVOURABLE CONDITIONS

**(a)** Except with the consent of the Panel, an offeror or persons acting in concert with it may not make any arrangements with shareholders and may not deal or enter into arrangements to deal in shares of the offeree company, or enter into arrangements which involve acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders. **(See also Rule 35.3.)**

**(b)** An arrangement made with a person who, while not a shareholder, is interested in shares carrying voting rights in the offeree company will also be prohibited by ~~this~~ Rule 16.1(a) if favourable conditions are attached which are not being extended to the shareholders. For the avoidance of doubt, there is no requirement to extend an offer or any arrangement which would otherwise be prohibited by this Rule to any person who is interested in shares, but is not a shareholder.

~~(See also Rule 35.3.)~~

## Rule 18

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

#### 18.1 RESTRICTION ON PROXY APPOINTMENTS

An offeror may not, save as permitted by Rule 18.2, require a shareholder<sub>1</sub> as a term of its acceptance of an offer<sub>1</sub> to appoint a proxy to vote in respect of its shares in the offeree company or to exercise any other rights or take any other action in relation to those shares<sub>2</sub>.



## 18.2 PERMITTED PROXY APPOINTMENTS

unless the ~~An~~ appointment is on the following terms, which must be set out in the offer document, is permitted:

- (a) the proxy may not vote, ...

## Rule 19

### SECTION I. CONDUCT DURING THE OFFER

#### RULE 19. INFORMATION

...

#### 19.3 UNACCEPTABLE STATEMENTS

(a) Parties to an offer and their advisers ...

(b) In particular, an offeror must not ...

(c) In the case of any doubt ...

## Rule 21.2

### 21.2 OFFER-RELATED ARRANGEMENTS

...

#### NOTES ON RULE 21.2

...

#### 3. ~~“Whitewash” transactions~~ Rule 9 waivers

Rule 21.2 also applies in the context of a ~~“whitewash”~~ transaction which is subject to a Rule 9 waiver. The Panel should be consulted at an early stage where such a “whitewash” transaction is proposed.

#### 4. *Disclosure*

An announcement of a firm intention to make an offer, an offer document or ~~whitewash~~ a Rule 9 waiver circular, as the case may be, must include a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2 and, subject to Note 6 on Rule 26, a copy of the agreement, arrangement or commitment must be published on a website in accordance with Rule 26.2.

## Rule 21.3

### 21.3 EQUALITY OF INFORMATION TO COMPETING OFFERORS

**(a)** Any information given to one offeror or potential offeror, whether publicly identified or not, must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome.

**(b)** ~~This~~ The requirement in Rule 21.3(a) will usually only apply when there has been a public announcement of the existence of the offeror or potential offeror to which information has been given or, if there has been no public announcement, when the offeror or bona fide potential offeror requesting information under this Rule has been informed authoritatively of the existence of another potential offeror.

## Rule 22

### ~~RULE 22. RESPONSIBILITIES OF THE OFFEREE COMPANY AND AN OFFEROR REGARDING REGISTRATION PROCEDURES AND IDENTIFICATION OF PERSONS WITH INTERESTS IN SECURITIES REPRESENTING OF 1% OR MORE~~

#### 22.1 REGISTRATION PROCEDURES

**(a)**—The board of the offeree company should ensure that its registrar complies fully with the procedures set out in Appendix 4. The board should also ensure prompt registration of transfers during an offer.

#### 22.2 PERSONS WITH INTERESTS IN SECURITIES IN THE OFFEREE COMPANY

**(b)**—The board of the offeree company should assist the Panel in identifying persons who are interested in 1% or more of any class of relevant securities of the offeree company and, promptly after the commencement of an offer period, should provide the Panel with details of all persons who are reasonably considered to be so interested. Such persons should also be sent an explanation of their disclosure obligations under Rule 8 at the same time as their details are provided to the Panel.

#### 22.3 PERSONS WITH INTERESTS IN SECURITIES IN AN OFFEROR

**(c)**—Except in cases where it has been announced that any offer is, or is likely to be, in cash, the board of the offeror should assist the Panel in identifying persons who are interested in 1% or more of any class of relevant securities of the offeror and, promptly after the announcement that first identifies the offeror as such, should provide the Panel with details of all persons who are reasonably considered to be so interested. Such persons should be sent an explanation of their disclosure obligations under Rule 8 at the same time as their details are provided to the Panel.

#### **NOTES ON RULE 22**

...

#### **2. Rule 2.11**

*Where, following the commencement of an offer period, the offeree company has sent a person a copy of an announcement or a circular in accordance with the provisions of Rule 2.11, there is no requirement to send that person a separate explanation of their disclosure obligations under Rule 8 in accordance with Rule 22.2 or Rule 22.3(b) or (c).*

## Rule 23

**SECTION J. DOCUMENTS FROM THE OFFEROR AND THE OFFEREE BOARD****RULE 23. GENERAL OBLIGATIONS AS TO INFORMATION**

## Rule 24

**24.1 THE OFFER DOCUMENT**

...

**(c) ~~Promptly following its publication,~~ In addition, the offeror must:****(i) publish the offer document on a website in accordance with Rule 26.1; and****(ii) announce that the offer document has been so published.**

...

**24.3 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER****Except with the consent of the Panel:**

...

**(c) the offer document must contain summary details of any current ratings and outlooks publicly accorded to the offeror and the offeree company by credit ratings agencies prior to the commencement of the offer period, any changes made to previous ratings or outlooks during the offer period, and a summary of the reasons given, if any, for any such changes;**

## Rule 25

**25.1 THE OFFEREE BOARD CIRCULAR**

...

**(c) ~~Promptly following its publication,~~ In addition, the offeree company must:****(i) publish the offeree board circular on a website in accordance with Rule 26.1; and****(ii) announce that the offeree board circular has been so published.**

...

**25.9 EMPLOYEE REPRESENTATIVES' OPINION AND PENSION SCHEME TRUSTEES' OPINION**

...

**NOTES ON RULE 25.9**

**1. Offeree company's responsibility for costs**

...

(See also Rule 32.6(bc).)

**Rule 28**

~~SECTION K. PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS~~

**RULE 28. PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

**Rule 29**

~~SECTION L. ASSET VALUATIONS~~

**RULE 29. ASSET VALUATIONS**

**Rule 30**

~~SECTION M. DISTRIBUTION OF DOCUMENTATION DURING AN OFFER~~

**RULE 30. DISTRIBUTION OF DOCUMENTATION DURING AN OFFER**

...

**30.5 DISTRIBUTION OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION TO THE PANEL AND OTHER PARTIES TO AN OFFER**

(a) ~~Before an offer document is published, a copy of the document in hard copy form and electronic form must be sent to the Panel. At the time of publication, a copy must also be sent in hard copy form and electronic form to the advisers to all other parties to the offer.~~

(b) Copies of all other documents, announcements and information published in connection with an offer by, or on behalf of, an offeror or the offeree company must at the time of publication be sent in electronic form to:

- (i) the Panel; and
- (ii) the advisers to all other parties to the offer.

~~Documents must also be sent in hard copy form to the Panel and the advisers to all other parties to the offer at the time of publication. Such documents, announcements or information must not be released to the media under an embargo.~~

## Rule 31

**SECTION N. OFFER TIMETABLE AND REVISION****RULE 31. TIMING OF THE OFFER\***

...

**31.5 ACCELERATION STATEMENTS**

...

(f) If an offeror wishes to include a reservation to an acceleration statement, the Panel must be consulted. See also Rule 35.1(f) and Note 1 on Rules 35.1 and 35.2.

...

**31.6 ACCEPTANCE CONDITION INVOCATION NOTICE**

...

**NOTE ON RULE 31.6****1. Prohibition on concurrent notices**

...

**2. Mandatory offerors**

See also Rule 9.4(b).

## Rule 32

**32.1 PUBLICATION OF REVISED OFFER DOCUMENT**

(a) If an offer is revised, a revised offer document, drawn up in accordance with Rules 24 and Rule 27, must be sent to shareholders of the offeree company and persons with information rights. ~~Promptly following its publication,~~ In addition, the offeror must:

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

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

(b) ~~At the same time~~ When a revised offer document is published:

(i) both the offeror and the offeree company must make the revised offer document readily and promptly available to their employee representatives (or, where there are no employee representatives, to the employees themselves);

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

...

**NOTES ON RULE 32.1**

...

**4. Triggering Rule 9†**

*When an offeror, which is making a voluntary offer either in cash or with a cash alternative, acquires an interest in shares which causes it to have to extend a mandatory offer under Rule 9 at no higher price than the existing cash offer, the change in the nature of the offer will not be ~~viewed treated~~ as a revision (and will ~~thus~~ not be precluded by an earlier no increase statement), ~~even if the offeror is obliged to waive any outstanding condition, but such an acquisition can only be made if the offer can remain open for acceptance for a further 14 days following the date on which the amended offer document is published. See also Note 9 on Rule 9.1 and Rule 9.4(c).~~*

...

**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 on Rules 35.1 and 35.2.

...

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

**(a)** The board of the offeree company must send to the company's shareholders and persons with information rights a circular containing its opinion on the revised offer as required by Rule 25.1, drawn up in accordance with Rules 25 and Rule 27. ~~Promptly following its publication, In addition,~~ the offeree company must:

- (i)** publish the circular on a website in accordance with Rule 26.1; and
- (ii)** announce that the circular has been published; ~~and~~

~~(iii)~~ **(b)** When the circular is published, the offeree company must make the circular readily and promptly available to its employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of its pension scheme(s).

~~(b)~~ **(c)** Where the board of the offeree company receives in good time before publication of its circular on the revised offer:

**Rule 35****~~SECTION O. RESTRICTIONS FOLLOWING OFFERS~~****RULE 35. RESTRICTIONS FOLLOWING OFFERS****35.1 DELAY OF 12 MONTHS**

...

**NOTES ON RULE 35.1****1. When consent may be given**

The Panel will normally only give its consent under Rule 35.1 if:

(a) the board of the offeree company so agrees. Where the offeror made a no increase statement or an acceleration statement without a reservation of the right to set the statement aside with the agreement of the offeree board, the Panel will not normally give its consent under this paragraph (a) in relation to a new offer, or any other transaction restricted by Rule 35.1, on more favourable terms than those available under the previous offer until after the later of:

(i) three months from the date on which the previous offer was withdrawn or lapsed; and

(ii) the end of the offer period;

(b) a third party (including a potential offeror which had been publicly identified prior to the date on which the previous offer was withdrawn or lapsed) announces a firm intention to make an offer for the offeree company;

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

(d) the Panel determines that there has been a material change of circumstances.

**2. Significant asset purchases**

In assessing whether assets are significant for the purpose of Rule 35.1(f), the Panel will have regard to the tests set out in Note 5 on Rule 2.8.

**35.2 PARTIAL OFFERS**

...

**NOTES ON RULES 35.1 and 35.2****1. When consent may be given**

The Panel will normally only give its consent under Rule 35.1 if:

(a) 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 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;

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

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

(d) the Panel determines that there has been a material change of circumstances.

**2. Significant asset purchases**

In assessing whether assets are significant for the purpose of Rule 35.1(f), the Panel will have regard to the tests set out in Note 5 on Rule 2.8.

## Rule 36

**SECTION P. PARTIAL OFFERS****RULE 36. PARTIAL OFFERS**

...

**36.6 WARNING ABOUT CONTROL POSITION**

In the case of a partial offer which could result in the offeror, either alone or with persons acting in concert with it, holding shares carrying over 50% of the voting rights of the offeree company, the offer document must contain specific and prominent reference to this and to the fact that, if the offer succeeds, the offeror or, where appropriate, the offeror and persons acting in concert with it, will be free, subject to Rule 36.3 and, where relevant, to Note 4 on Rule 9.1, to acquire further interests in shares without incurring any obligation to make an offer under Rule 9 ~~to make a general offer~~.

## Rule 37

**SECTION Q. REDEMPTION OR PURCHASE BY A COMPANY OF ITS OWN SECURITIES****RULE 37. REDEMPTION OR PURCHASE BY A COMPANY OF ITS OWN SECURITIES**

...

**37.1 POSSIBLE REQUIREMENT TO MAKE A MANDATORY OFFER**

When a company redeems or purchases its own voting shares, any resulting increase in the percentage of shares carrying voting rights in which a person or group of persons acting in concert is interested will be treated as an acquisition for the purpose of Rule 9. Subject to prior consultation, the Panel will normally waive any resulting obligation to make an general offer under Rule 9 if there is a vote of independent shareholders and a procedure on the lines of that set out in Appendix 1 is followed.

**NOTES ON RULE 37.1**

...

**3. Situations where a mandatory obligation may arise**

*Where the directors are aware that a company's redemption or purchase of its own shares would otherwise give rise to an obligation for a person (or group of persons acting in concert) to make a mandatory offer, the board of directors should ensure that an appropriate resolution to approve a Rule 9 waiver of this obligation is put to independent shareholders prior to implementation of the relevant redemption or purchase and as a pre-condition to its implementation. Additionally, each individual director should draw the attention of the board at the time any redemption or purchase of the company's own shares is proposed, and whenever shareholders' authority for any such redemption or purchase is to be sought, to interests in shares of parties acting in concert, or presumed to be acting in concert, with that director.*

...



## 5. **Disqualifying transactions**

Notwithstanding that the redemption or purchase of voting shares is made conditional upon the prior approval of ~~a majority of the shareholders-independent shareholders-of the transaction at a general meeting of the company:~~

(a) ~~the Panel will not normally waive an obligation under Rule 9 agree to grant a Rule 9 waiver~~ if the relevant person, or any member of the relevant group of persons acting in concert, has acquired an interest in shares in the knowledge that the company intended to seek permission from its shareholders to redeem or purchase its own shares; and

(b) a Rule 9 waiver will be invalidated if any acquisitions are made by the relevant person, or by any member of the relevant group of persons acting in concert, in the period between the proposed publication date of the circular and the shareholders' meeting.

## 6. **Renewals**

Any Rule 9 waiver ~~previously obtained under this Rule~~ will expire at the same time as the relevant shareholders' authority under Chapter 4 of Part 18 of the Companies Act 2006 (whether or not voting shares have in fact been redeemed or purchased). Accordingly, Rule 9 waivers will normally need to be renewed at the same time as the relevant shareholders' authority is renewed.

## 7. **Responsibility for making an offer**

If an obligation arises under ~~this Rule 37~~ for ~~an general~~ offer to be made and a ~~dispensation~~ Rule 9 waiver is not granted, the prime responsibility for making an offer will normally attach to the person who obtains or consolidates control as a result of the redemption or purchase of its own shares by the company. Where control is obtained or consolidated by a group of persons acting in concert, the prime responsibility will normally attach to the principal member or members of the group acting in concert. In exceptional cases, responsibility for making an offer may attach to one or more directors if, in the view of the Panel, there has been a failure by the board as a whole, or by any one or more individual directors, to address satisfactorily the implications of a redemption or purchase by the company of its own shares in relation to interests in shares of directors or parties acting in concert with one or more of the directors.

## Rule 38

### ~~SECTION R. DEALINGS BY CONNECTED EXEMPT PRINCIPAL TRADERS~~

### RULE 38. DEALINGS BY CONNECTED EXEMPT PRINCIPAL TRADERS

## Appendix 1

### APPENDIX 1

### WHITWASH GUIDANCE NOTE RULE 9 WAIVERS

(See Note 1 of the Notes on Dispensations from Rule 9)

## 1 INTRODUCTION

(a) ~~This note Appendix 1 applies where sets out the procedures to be followed if the Panel is ~~to be asked to waive the obligation to make an~~ general offer under Rule 9 which would otherwise arise where, as a result of the issue of new securities as consideration for an acquisition or a cash ~~injection~~ subscription or in fulfilment of obligations under an agreement to underwrite the issue of new securities, a person or group of persons acting in concert acquires an interest, or interests, in shares ~~to an extent which would normally give rise to an obligation to make a general offer.~~~~

(b) Where the word “offeror” is used in a particular Rule, it should be taken in the context of a ~~whitewash~~ Rule 9 waiver as a reference to the potential controllers. Similarly, the phrase “offeree company” should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise.

(c) Rules 19, 20, 21.3, 24.15, 26, and 30, where relevant, apply equally to documents, announcements and information published in connection with a transaction which is the subject of the ~~whitewash procedure~~ Rule 9 waiver.

## 2 SPECIFIC GRANT OF WAIVER REQUIRED

In each case, specific grant of a Rule 9 waiver ~~from the Rule 9 obligation~~ is required. Such grant will be subject to:

(a) there having been no disqualifying transactions (as set out in Section 3 below) ~~by the person or group seeking the waiver in the previous 12 months;~~

...

(e) ~~disenfranchisement of the person or group seeking the waiver~~ potential controller and persons acting in concert with it and of any other non-independent party at any such meeting.

### **~~NOTES ON SECTION 2~~**

#### **~~1. — Early consultation~~**

~~Consultation with the Panel at an early stage is essential. Late consultation may well result in delays to planned timetables. Experience suggests that the documents published in connection with the whitewash procedure may have to pass through several proofs before they meet the Panel’s requirements and no waiver of the Rule 9 obligation will be granted until such time as the documentation has been approved by the Panel.~~

#### **~~2. — Other legal or regulatory requirements~~**

~~Clearance of the circular in accordance with any other legal or regulatory requirement (for example, under the FCA Handbook) does not constitute approval of the circular by the Panel.~~

## 3 DISQUALIFYING TRANSACTIONS

Notwithstanding ~~the fact that the issue of new securities is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company~~ shareholders:

(a) the Panel will not normally agree to grant a Rule 9 waiver ~~waive an obligation under Rule 9 if the person to whom the new securities are to be issued~~ potential controller or any person acting in concert with ~~that person~~ it has acquired any interest in shares in the company in the 12 months prior to the proposed publication date of the circular ~~relating to the proposals~~ but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities; and

(b) a Rule 9 waiver will not be granted, or will be invalidated if any acquisitions of interests in shares are made in the period between the publication of the circular and the shareholders' meeting.

#### 4 WHITEWASH-RULE 9 WAIVER CIRCULAR

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

...

(b) full details of the number and percentage of shares in which the potential controller and persons acting in concert with it might become interested (together with details of the different interests concerned) ~~maximum potential controlling position:~~

(i) where this is dependent upon the outcome of underwriting arrangements, it should be assumed that the potential controllers will, in addition to any other entitlement, take up ~~their~~ its full underwriting participation; and

(ii) where convertible securities, options or securities with subscription rights are to be issued, the potential controlling position must be indicated on the assumption that only the potential controllers will convert or exercise the subscription rights, and will do so in full and at the earliest opportunity (the date of which must also be given);

(c) where the maximum potential shareholding resulting from the proposed transaction will exceed 50% of the voting rights of the company, specific and prominent reference to this possibility and to the fact that, subject to Section 7 below, the potential controllers may acquire further interests in shares without incurring any further obligation to make an offer under Rule 9 ~~to make a general offer;~~

...

(e) a statement that the Panel has agreed, subject to shareholders' approval, to waive any obligations to make an general offer under Rule 9 which might result from the transaction;

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

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

(ii) ...

...

(j) Rules 23, 24.2, 24.3, 25.2 and 25.3 (offeror intentions, financial and other information, and views of the offeree board). ~~information which must include f~~Full details of the assets, if any, being injected must be included);

...

## 6 ANNOUNCEMENTS FOLLOWING SHAREHOLDERS' APPROVAL

(a) Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the ~~offeree~~ company giving the result of the meeting and the number and percentage of ~~offeree~~ the company's shares in which the potential controllers ~~are~~ is, or ~~are~~ is entitled to be, interested as a result.

(b) Where the final controlling position is dependent on the results of underwriting, the ~~offeree~~ company must make an announcement following the issue of the new securities stating the number and percentage of shares in which the potential controllers ~~are~~ is interested at that time.

(c) Where convertible securities, options or securities with subscription rights are to be issued:

...

(ii) following each issue of new securities a further announcement must be made confirming the number and percentage of shares in which the potential controllers ~~are~~ is interested at that time; and

(iii) the information in (i) and (ii) should be included in the company's annual report and accounts until all the securities in respect of which the Rule 9 waiver has been granted have been issued or it is confirmed that no such issue will be made.

...

## 7 SUBSEQUENT ACQUISITIONS BY POTENTIAL CONTROLLERS

(a) Immediately ...

(b) Where shareholders approve the issue of convertible securities, or the issue of warrants or the grant of options to subscribe for new shares where no immediate voting rights are obtained, the Panel will view the approval as sanctioning maximum conversion or subscription at the earliest possible moment without the necessity for the making of an offer under Rule 9. However, if the potential controllers proposes to acquire further interests in voting shares following the relevant meeting, the Panel should be consulted to establish the number of shares to which the Rule 9 waiver will be deemed to apply.

(c) {See also Note 4 on Rule 9.1 and Rule 37.1.}

## Appendix 2

**APPENDIX 2**  
**FORMULA OFFERS GUIDANCE NOTE**

...

**2 SPECIFICATION OF THE FORMULA****(a)** Since ...**(b)** The Panel ...

...

**6 RULE 6****(a)** Since ...**(b)** Calculation ...

...

**9 OFFEREE BOARD OBLIGATIONS****(a)** There ...**(b)** Once ...

## Appendix 4

**APPENDIX 4**  
**RECEIVING AGENTS' CODE OF PRACTICE**

...

**1 INTRODUCTION****(a)** This Code of Practice ...**(b)** It is essential ...**(c)** The principles and procedures ...**(d)** Receiving agents ...

...

**3 THE PROVISION OF THE OFFEREE COMPANY'S REGISTER**

...

**(b)** The offeree company's registrar should also be instructed to keep the register as up-to-date as the register maintenance system will allow. CREST imposes certain obligations on registrars in this respect but for certificated

holdings outside CREST the registrar should ensure that maintenance is such that it can comply with (c) to (e) below.

...

(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.

(d) As far as certificated holdings are concerned ...

(e) From the final register day ...

(ef) Arrangements should be made ...

## Appendix 5

### APPENDIX 5

#### TENDER OFFERS

##### 1 PANEL'S CONSENT REQUIRED

(a) The Panel's consent is required for any tender offer. The Panel's consent will normally be granted where:

(ai) the tender offer could not result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of the company on the closing date of the tender; or

(bij) the tender offer is by a person holding shares carrying more than 50% of the voting rights of a company, is for less than all the shares carrying voting rights held by the minority and the Panel believes the circumstances justify the use of a tender offer.

(b) Where a tender offer to which this Appendix applies is made on a UK regulated market or a UK multilateral trading facility, this Appendix takes precedence over any requirements of the relevant market or facility for the conduct of tender offers. However, the resulting transactions will be subject to the relevant trade and transaction reporting rules and requests for delivery and settlement.

(c) This Appendix does not apply where a tender offer is made solely for the purpose of a company buying in its own shares.

...

##### 2 PROCEDURE AND CLEARANCE

...

(f) In every case the FCA, the relevant UK regulated market or UK multilateral trading facility and the Panel must be sent a copy of the final text of the advertisements or circulars ~~in hard copy form and electronic form~~ at the same time as they are sent to the newspapers or are published.

...

#### 4 CIRCULARS FROM THE BOARD OF THE OFFEREE COMPANY

A copy of any document published by the board of the offeree company in connection with the tender offer must be sent to the Panel in ~~hard-copy form and~~ electronic form at the same time as it is published.

### Appendix 8

#### APPENDIX 8

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

...

#### 2 GENERAL

...

**(c) If one competing offeror makes a no increase statement either on the day prior to Day 46 or on Day 46 (before 5.00 pm), the other competing offeror may announce a revised offer on Auction Day 1 in accordance with Section 3(a).**

**(ed)** ...

**(ee)** ...

**(ef)** ...

**(fg)** ...

**(gh)** ...

**(hi)** ...

**(ij)** ...

**(jk)** ...