

THE TAKEOVER PANEL

CODE COMMITTEE

RESPONSE STATEMENTS 6, 7 AND 8 AND CODE AMENDMENTS

On 10 December 2001 and 18 January 2002, the Code Committee announced that it intended to consider the responses received to Public Consultation Papers 6 and 7 and Public Consultation Paper 8 respectively and, in due course, to approve the final text of the proposed amendments to the Code and publish papers setting out the results of the public consultation process. The Code Committee has today issued these papers, Response Statements 6,7 and 8, and they may be obtained from the Panel's website at www.thetakeoverpanel.org.uk or by telephoning the Panel on 020 7382 9026.

As a result of the public consultation process, the proposals in Public Consultation Paper 6 will be implemented with some modifications and those proposals in Public Consultation Papers 7 and 8 will be implemented without amendment. The changes to the Code set out in Response Statements 6, 7 and 8 are contained in the Appendix to this statement and will take effect immediately. The amended pages of the Code will be published in due course.

21 February 2002

APPENDIX

1. Rule 6.1

Add the following text as the final sentence of the **Rule**:-

"If a purchase of 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 obligations under this Rule in respect of those purchases."

Note 3

The reference to "*Rule 11*" in the first sentence will read "*Rule 11.1*".

2. Rule 7.1

Delete the words "**(requirement for a cash offer)**" appearing after "**Rule 11**" and replace with "**(nature of consideration to be offered)**".

3. Rule 11.1

Note 4

Add a new final sentence to *Note 4* as follows:-

"The Panel should be consulted in all relevant cases. "

Note 5

Delete existing *Note 5* and replace with the following: -

"5. Acquisitions for securities

For the purpose of this Rule, shares acquired by an offeror and any person acting in concert with it in exchange for securities, either during or in the 12 months preceding the commencement of the offer period, will normally be deemed to be purchases for cash on the basis of the value of the securities at the time of the purchase. However, if the vendor of the offeree company shares is required to hold the securities received in exchange until either the

offer has lapsed or the offer consideration has been posted to accepting shareholders, no obligation under Rule 11.1 will be incurred.

See also Note 6 on Rule 11.2. "

4. Rule 11.2

Add a new **Rule** and *Notes* as follows:-

"11.2 WHEN A SECURITIES OFFER IS REQUIRED

Where purchases of any class of the offeree company shares carrying 10% or more of the voting rights currently exercisable at a class meeting of that class have been made by an offeror and any person acting in concert with it in exchange for securities in the three months prior to the commencement of and during the offer period, such securities will normally be required to be offered to all other holders of shares of that class.

Unless the vendor is required to hold the securities received until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, an obligation to make an offer in cash or to provide a cash alternative will also arise under Rule 11.1.

NOTES ON RULE 11.2

1. Basis on which securities are to be offered

Any securities required to be offered pursuant to this Rule must be offered on the basis of the same number of consideration securities received by the vendor for each offeree company share rather than on the basis of securities equivalent to the value of the securities received by the vendor at the time of the relevant purchase. Where there has been more than one relevant purchase, offeror securities must be offered on the basis of the greater or greatest number of consideration securities received for each offeree company share.

2. Equality of treatment

The Panel may require securities to be offered on the same basis to all other holders of shares of that class even though the amount purchased is less than 10% or the purchase took place more than three months prior to the commencement of the offer period. However, this discretion will not, normally, be exercised unless the vendors of the relevant shares are directors of, or other persons closely connected with, the offeror or the offeree company.

3. *Vendor placings*

Shares acquired in exchange for securities will normally be deemed to be purchases for cash for the purposes of this Rule if an offeror or any of its associates arranges the immediate placing of such consideration securities for cash, in which case no obligation to make a securities offer under this Rule will arise.

4. *Management retaining an interest*

In a management buyout or similar transaction, if the only offeree shareholders who receive offeror securities are members of the management of the offeree company, the Panel will not, so long as the requirements of Note 4 on Rule 16 are complied with, require all offeree shareholders to be offered offeror securities pursuant to Rule 11.2, even though such members of the management of the offeree propose to sell, in exchange for offeror securities, more than 10% of the offeree's shares.

If, however, offeror securities are made available to any non-management shareholders (regardless of the size of their holding of offeree shares), the Panel will normally require such securities to be made available to all shareholders on the same terms.

5. *Acquisitions for a mixture of cash and securities*

The Panel should be consulted where 10% or more has been acquired during the offer period and within 12 months prior to its commencement for a mixture of securities and cash.

6. *Purchases in exchange for securities to which selling restrictions are attached*

Where an offeror and any person acting in concert with it has purchased 10% or more of the voting rights of any class of shares in the offeree company during the offer period and within 12 months prior to its commencement and the consideration received by the vendor includes shares to which selling restrictions of the kind set out in the second sentence of Rule 11.2 are attached, the Panel should be consulted.

7. *Applicability of the Notes on Rule 11.1 to Rule 11.2*

See Notes 2, 5, 6, 7, 8, 10 and 11 on Rule 11.1 which may be relevant.

In addition, if an offer is announced in accordance with Note (a)(iii) on Rule 35.1, any purchases of offeree company shares for securities during the competition reference period will be deemed to be purchases during the new offer period for the purposes of this Rule. "

Existing **Rule 11.2** (including reference thereto in the corresponding *Note*) becomes **Rule 11.3**.

In new **Rule 11.3**, the text in parentheses will read "**(for the purpose of Rules 11.1 and 11.2)**".

5. **Rule 12.2**

In the *Note*, the text in parenthesis will read "*(see also Rule 19.8 and the Notes on Rules 6.1, 11, 20.1, 20.2, 35.1 and 35.2 and 38.2)*".

6. **Rule 24.3**

In *Note 4*, sub-paragraph (i), delete the text appearing after the word "*offer*" in that sub-paragraph and replace with "*, all purchases and all sales can be aggregated;*".

In *Note 4*, sub-paragraph (ii), substitute "*three*" for the word "*two*" and add "*on a monthly basis*" after the words "*can be aggregated*".

In the second sentence of the final paragraph of *Note 4*, after the word "*dealings*" add "*, together with a draft of the proposed aggregated disclosure,*" and after the words "*the Panel*", add "*, for its approval, in advance of the posting of the offer documentation*" and after the word "*and*" insert "*the full list of dealings*".

7. **Rule 31.6**

Delete **Rule 31.6(a)(i)** and replace with:-

"(i) in a competitive situation (see Note 4 below); or"

Add a new *Note 4* as follows:-

"4. Competitive situations

If a competing offer has been announced, both offerors will normally be bound by the timetable established by the posting of the competing offer document.

In addition, the Panel will extend "Day 60" in accordance with any procedure established by the Panel in accordance with Rule 32.5.

The Panel will not normally grant its consent under Rule 31.6(a)(ii) in a competitive situation unless its consent is sought before the 46th day following the posting of the competing offer document, "

8. Rule 32.1

In Note 2, delete *"introduce a cash offer under"* and replace with *"make an offer in accordance with "*.

Add a new **Rule 32.5** and *Notes* as follows:-

"32.5 COMPETITIVE SITUATIONS

If a competitive situation continues to exist in the later stages of the offer period, the Panel will normally require revised offers to be published in accordance with an auction procedure, the terms of which will be determined by the Panel. That procedure will normally require final revisions to competing offers to be announced by the 46th day following the posting of the competing offer document but enable an offeror to revise its offer within a set period in response to any revision announced by a competing offeror on or after the 46th day. The procedure will not normally require any revised offer to be posted before the expiry of a set period after the last revision to either offer is announced. The Panel will consider applying any alternative procedure which is agreed between competing offerors and the board of the offeree company.

NOTES ON RULE 32.5

1. Dispensation from obligation to post

The Panel will normally grant dispensation from the obligation to post a revised offer, which is lower than the final revised offer announced by a competing offeror, when the board of the offeree company consents.

2. Guillotine

The Panel may impose a final time limit for announcing revisions to competing offers for the purpose of any procedure established in accordance with this Rule taking into account representations by the board of the offeree company, the revisions previously announced and the duration of the procedure."

9. Rule 35.1

Amend the second sentence of sub-paragraph (a)(i) of the *Note on Rules 35.1 and 35.2* as follows:-

- (a) add the word "*either*" after "*where the offerer*"; and
- (b) after "*no extension statement*", add "*or was one of two or more competing offerors whose offers lapsed with combined acceptances of less than 50% of the voting rights of the offeree company*".

10. Add a new **Rule 35.4** as follows:-

"35.4 RESTRICTIONS ON DEALINGS BY A COMPETING OFFEROR WHOSE OFFER HAS LAPSED

Except with the consent of the Panel, where an offer has been one of two or more competing offers and has lapsed, neither that offeror, nor any concert party of that offeror, may acquire shares in the offeree company on terms better than those made available under its lapsed offer until each of the competing offers has either been declared unconditional in all respects or has itself lapsed. For these purposes, the value of the lapsed offer shall be calculated as at the day the offer lapsed."