

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2013/2

Pension scheme trustee issues

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

The Takeover Code is amended, with effect from 20 May 2013, in accordance with the Appendix to this instrument.

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

Lindsay Tomlinson

Chairman of the Code Committee

for and on behalf of the Code Committee

22 April 2013

APPENDIX

DEFINITIONS

Acting in concert

...

Without prejudice to the general application of this definition, the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:

...

(3) a company with any of its pension ~~funds~~schemes and the pension ~~funds~~schemes of any company covered in (1);

...

NOTES ON ACTING IN CONCERT

...

7. Pension ~~funds~~ schemes

The presumption that a company is acting in concert with any of its pension ~~funds~~schemes will normally be rebutted if it can be demonstrated to the Panel's satisfaction that the assets of the pension ~~fund~~scheme are managed under an agreement or arrangement with an independent third party which gives such third party absolute discretion regarding dealing, voting and offer acceptance decisions relating to any securities in which the pension scheme is interested~~the fund~~. Where, however, the discretion given is not absolute, the presumption will be capable of being rebutted, provided that the pension ~~fund~~scheme trustees do not exercise any powers they have retained to intervene in such decisions.

...

Pension scheme

A funded scheme sponsored by a company, or any of its subsidiaries, which provides pension benefits, some or all of which are on a defined benefit basis, and which has trustees (or, in the case of a non UK scheme, managers).

Rule 2.12

2.12 ~~OBLIGATION TO SEND DISTRIBUTION OF ANNOUNCEMENTS TO SHAREHOLDERS, AND MAKE THEM AVAILABLE TO EMPLOYEE REPRESENTATIVES (OR EMPLOYEES) AND PENSION SCHEME TRUSTEES~~

(a) Promptly after the commencement of an offer period (except where an offer period begins with an announcement under Rule 2.7), a copy of the relevant announcement must be:

(i) ~~sent by the offeree company to its shareholders, persons with information rights and the Panel;~~ and ~~must be~~

(ii) ~~made readily available by the offeree company 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) Promptly after the publication of an announcement made under Rule 2.7:

(i) the offeree company must send a copy of that announcement, or a circular summarising the terms and conditions of the offer, to its shareholders, persons with information rights and the Panel and must make that announcement or circular readily available to the trustees of its pension scheme(s); and

(ii) both the offeror and the offeree company must make that announcement, or a circular summarising the terms and conditions of the offer, readily available to their employee representatives (or, where there are no employee representatives, to the employees themselves).

...

(d) When, under (a) or (b)(ii) above, the offeree company makes a copy of an announcement or a circular summarising the terms and conditions of the offer available to its employee representatives (or employees) and to the trustees of its pension scheme(s), it must at the same time inform them of the right of employee representatives and pension scheme trustees (as the case may be) under Rule 25.9 to have a separate opinion appended to the offeree board's circular, when published in accordance with Rule 25.1, ~~and~~ In addition, the offeree company must inform its employee representatives (or employees) of the offeree company's responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in ~~that~~ their opinion.

NOTES ON RULE 2.12

1. ***Where a circular summarising an announcement made under Rule 2.7 is sent***

Where, following an announcement made under Rule 2.7, a circular summarising the terms and conditions of the offer is sent or made readily available by the offeree company to its shareholders, persons with information rights, ~~employees or its employee~~ representatives (or employees) or its pension scheme trustees, the full text of the announcement must be made readily and promptly available to them. In addition, the circular must give details of the website on which a copy of the announcement will be published in accordance with Rule 30.4(a).

2. ***Shareholders, persons with information rights, ~~employees and employee~~ representatives (or employees) outside the EEA***

...

Rule 19.2**19.2 RESPONSIBILITY**

- (a) ... **This Rule does not apply to:**

...

(iii) any separate opinion of the employee representatives of the offeree company or the trustees of its pension scheme(s) ~~on the effects of the offer on employment~~, as referred to in Rule 25.9 or Rule 32.6.

Rule 20.1**20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS**

...

NOTES ON RULE 20.1

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6. ***Sharing information with employee representatives (or employees) and pension scheme trustees***

Subject to the requirements of Rule 2.1, the Code does not prevent the passing of information in confidence by:

(a) *an offeror or the offeree company to their employee representatives (or employees) or to the trustees of their pension scheme(s); or*

(b) *an offeror to the employee representatives (or employees) of the offeree company or to the trustees of the offeree company's pension scheme(s),*

where the employee representatives (or employees) or the trustees of the pension scheme(s) are acting in their capacity as such (rather than in their capacity as shareholders).

Meetings with employee representatives (or employees) or pension scheme trustees acting in their capacity as such, both prior to and during the offer period, are not normally covered by Note 3 on Rule 20.1, although the Panel should be consulted if any employees or pension scheme trustee ~~are~~ is interested in a significant number of shares.

Rule 21

21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED

...

NOTES ON RULE 21.1

...

7. Pension schemes

This Rule may apply to proposals affecting the offeree company's pension scheme(s) ~~arrangements~~, such as proposals involving the application of a pension fund ~~and~~ scheme surplus, a material increase in the financial commitment of the offeree company in respect of its pension scheme(s) or a change to the constitution of the pension scheme(s). The Panel must be consulted in advance in relation to such proposals.

...

21.2 INDUCEMENT FEES AND OTHER OFFER-RELATED ARRANGEMENTS

...

(b) An offer-related arrangement means any agreement, arrangement or commitment in connection with an offer, including any inducement fee arrangement or other arrangement having a similar or comparable financial or economic effect, but excluding:

...

(v) ... ; **and**

(vi) ... ; **and**

(vii) an agreement between an offeror and the trustees of any of the offeree company's pension schemes in relation to the future funding of the pension scheme.

...

NOTES ON RULE 21.2

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4. Disclosure

An announcement of a firm intention to make an offer, offer document or whitewash 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 26.1.

Rule 23.2

23.2 MAKING DOCUMENTS, ANNOUNCEMENTS AND INFORMATION AVAILABLE TO SHAREHOLDERS, PERSONS WITH INFORMATION RIGHTS AND EMPLOYEE REPRESENTATIVES (OR EMPLOYEES)

If a document, an announcement or any information is required to be sent, published or made available to:

...

(c) employee representatives (or employees) of the offeror or the offeree company,

...

NOTE ON RULE 23.2

Shareholders, persons with information rights, ~~employees~~ and employee representatives (or employees) outside the EEA

...

Similar dispensations will apply in respect of information or documents which are sent, published, provided or required to be made available to employee representatives (or employees) of the offeror or the offeree company.

The Panel will not normally grant any dispensation in relation to shareholders, persons with information rights, employee representatives (or employees) of the offeree company who are located within the EEA.

Rule 24

24.1 THE OFFER DOCUMENT

(a) The offeror must, normally within 28 days of the announcement of a firm intention to make an offer, send an offer document to shareholders ~~of~~ in the offeree company and persons with information rights, in accordance with Rule 30.1 and **must make the document readily available to the trustees of the offeree company's pension scheme(s)**. At the same time, both the offeror and the offeree company must make the offer document readily available to their employee representatives (or, where there are no employee representatives, to the employees themselves). The Panel must be consulted if the offer document is not to be published within this period.

...

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

(a) In the offer document, the offeror must state its intentions with regard to the future business of the offeree company and explain the long-term commercial justification for the offer. In addition, it must state:

...

(iii) its intentions with regard to employer contributions into the offeree company's pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members;

(iiiv) ... ; and

(ivv)

(b) If the offeror has no intention to make any changes in relation to the matters described under (a)(i) to **(iiiv)** above, or if it considers that its strategic plans for the offeree company will have no repercussions on

employment or the location of the offeree company's places of business, it must make a statement to that effect.

Rule 25

25.1 THE OFFEREE BOARD CIRCULAR

(a) The board of the offeree company must, normally within 14 days of the publication of the offer document, send a circular to shareholders in the offeree company's shareholders and persons with information rights, in accordance with Rule 30.1 and must make the document readily available to the trustees of its pension scheme(s). ~~and must, at~~ At the same time, the offeree company must make it the circular readily available to its employee representatives (or, where there are no employee representatives, to the employees themselves).

(b) On the day of publication, the offeree company must:

(i) publish the offeree board circular on a website in accordance with Rule 30.4; and

(ii) announce via a RIS that ~~it the offeree board circular~~ has been so published.

NOTE ON RULE 25.1

Where there is no separate offeree board circular

Where the offeree board's circular is combined with the offer document, Rule 25.1 will not apply. However, Rules 25.2 to 25.9 will apply to the combined document.

...

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

Where the board of the offeree company receives in good time before publication of must append to its circular on the offer a separate opinion from:

(a) an opinion from its employee representatives on the effects of the offer on employment; or

(b) an opinion from the trustees of any of its pension scheme(s) on the effects of the offer on the pension scheme(s),

any provided such opinion is received in good time before publication of that must be appended to the circular. Where ~~the any such opinion of the~~

~~employee representatives is not received~~ **but not in** good time before publication of the offeree board circular, the offeree company must promptly publish the ~~employee representatives' opinion~~ on a website and announce via a RIS that it has been so published, provided that it is received no later than 14 days after the date on which the offer becomes or is declared wholly unconditional.

NOTES ON RULE 25.9

1. Offeree company's responsibility for costs

The offeree company must pay for:

(a) the costs of the publication of ~~the~~ any opinion received from employee representatives' ~~opinion~~ and for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion in order to comply with the standards of Rule 19.1-; and

(b) the costs of the publication of any opinion received from trustees of its pension scheme(s).

(See also Rule 32.6(b).)

2. Notification of the rights of employee representatives and pension scheme trustees under Rule 25.9

See Rule 2.12(d).

Rule 26

RULE 26 DOCUMENTS TO BE PUBLISHED ON A WEBSITE

...

NOTES ON RULE 26

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4. Shareholders, persons with information rights and other persons outside the EEA in non-EEA jurisdictions

...

6. Agreements between an offeror and the trustees of the offeree company's pension scheme(s)

An agreement between an offeror and the trustees of any of the offeree company's pension schemes will be required to be published on a website only if the agreement is a material contract of the offeror.

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 27, must be sent to shareholders of the offeree company and persons with information rights. On the same day, the offeror must:

(i) publish the revised offer document on a website in accordance with Rule 30.4; and

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

(b) At the same time;

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

(iii) the offeree company must inform its employee representatives (or employees) and the trustees of its pension scheme(s) of the right of employee representatives and pension scheme trustees under Rule 32.6 to have a separate opinion on the revised offer appended to any offeree board circular published in relation to the revised offer, and ~~In addition, the offeree company must inform its employee representatives (or employees) of the offeree company's responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that~~ their opinion.

...

32.6 THE OFFEREE BOARD'S OPINION AND THE OPINIONS OF THE EMPLOYEE REPRESENTATIVES' OPINION 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 27 and, at the same time:

...

(iii) make it 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) Where the board of the offeree company receives in good time before publication of ~~must append to its circular~~ on the revised offer:

(i) ~~a separate an~~ opinion from its employee representatives on the effects of the revised offer on employment; or

(ii) an opinion from the trustees of any of its pension scheme(s) on the effects of the revised offer on the pension scheme(s),

~~provided any such opinion must be appended to the is received in good time before publication of that circular. Where the any such opinion of the employee representatives is not received but not in good time before publication of the offeree board circular, the offeree company must promptly publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received no later than 14 days after the date on which the offer becomes or is declared wholly unconditional.~~

NOTE ON RULE 32.6

Employee representatives' opinion: Offeree company's responsibility for costs

See Note 1 on Rule 25.9.