

# THE TAKEOVER PANEL

## CODE COMMITTEE

### **Instrument 2014/2**

#### **Miscellaneous amendments to the Takeover Code**

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, Articles 2, 3 and 4 of the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009 and sections 340A, 340B and 340C of the Companies (Guernsey) Law, 2008, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

The Takeover Code is amended, with effect from 1 January 2015, in accordance with the Appendix to this instrument.

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

**Guy Elliott**  
**Chairman of the Code Committee**  
**for and on behalf of the Code Committee**

**14 November 2014**

## APPENDIX

### DEFINITIONS

#### Acting in concert

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#### NOTES ON ACTING IN CONCERT

...

#### 5. Standstill agreements

*Agreements between a company, or the directors of a company, and a person which restrict that person or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or reducing the number of shares in which he or they are interested, may be relevant for the purpose of this definition. However, the Panel will not normally consider the parties to the agreement to be acting in concert provided that the agreement does not restrict any of the parties from either:*

*(a) accepting an offer for the company's shares at any stage; or*

*(b) agreeing to accept any offer for the company's shares either before or after its announcement.*

*The same approach will normally apply to an agreement to which the company's financial adviser or nominated adviser and/or its sponsor and/or underwriter, rather than the company itself (and/or its directors), is a party, for example, an agreement entered into at the time of an equity offering with a view to ensuring an orderly aftermarket in the company's shares.*

*Where parties intend to enter into standstill agreements to which neither the company (and/or its directors) nor its financial adviser or nominated adviser, its sponsor or underwriter is a party (for example, an agreement between two shareholders), or in any other cases of doubt, the Panel should be consulted in advance.*

*In cases of doubt, the Panel should be consulted.*

#### 11. Indemnity and other dealing arrangements

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*(c) Note 11(b) does not apply to irrevocable commitments or letters of intent, which are subject to Rule 2.7(c)(vi) and Rule 2.11 and Note 5(a) on Rule 8.*

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## Dealings

A dealing includes the following:

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(f) ... ; ~~and~~

(g) the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company or an offeror; and

~~(gh)~~ ...

## Rule 2.2

### 2.2 WHEN AN ANNOUNCEMENT IS REQUIRED

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#### NOTES ON RULE 2.2

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

(a) *The Panel may grant a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. ~~After~~ If such a dispensation has been granted, neither the potential offeror, nor any person who acted in concert with it, nor any person who is subsequently acting in concert with either of them, may:*

*(i) within six months of the dispensation having been granted, do any of the things set out in Rules 2.8(a) to (e); or*

*(ii) within three months of the dispensation having been granted, ~~not~~ actively consider making an offer for the offeree company, make an approach to the board of the offeree company or acquire an interest in shares in the offeree company for a period of six months and will be treated as having made a statement to which Rule 2.8 applies.*

*After the end of the period referred to in paragraph (ii) ~~t~~The Panel ~~may~~ will normally consent to the ~~these~~ restrictions in paragraph (i) being set aside in the circumstances set out in paragraphs ~~(a)~~ (b) to (d) of Note 2 on Rule 2.8, but during the period referred to in paragraph (ii) the Panel will normally consent to the restrictions in paragraphs (i) and (ii) being set aside only in the circumstances set out in paragraphs (b) to (d) of Note 2 on Rule 2.8. ~~The Panel may also, at the request of the offeree company, consent to the potential~~*

~~offeror recommencing active consideration of an offer but such consent will not normally be given within three months of the dispensation having been granted.~~

(b) Where a potential offeror to which a dispensation has been granted under paragraph (a) has ceased actively to consider making an offer, the Panel may nonetheless require an announcement to be made where:

- (i) any rumour and speculation continues or is repeated; and/or
- (ii) it considers that this is otherwise necessary in order to prevent the creation of a false market.

Any such announcement made by the offeree company will not normally be required to identify the former potential offeror, unless it has been specifically identified in rumour and speculation.

## **Rule 2.4**

### **2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER**

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#### **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.*

## **Rule 2.5**

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

(a) The Panel must be consulted in advance if, prior to the announcement of a firm intention to make an offer, any person proposes to make a statement in relation to the terms on which an offer might be made for the offeree company. ~~If any such statement is made by or on behalf of a potential offeror, (or its directors, officials or advisers) makes such a statement and it is not withdrawn immediately withdrawn~~ if incorrect, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made and only in wholly exceptional circumstances will the offeror be allowed subsequently not to be so bound, unless, except where it specifically reserved the right not to

**be so bound in certain circumstances at the time the statement was made and those circumstances subsequently arise (see Note 1) or in wholly exceptional circumstances. In particular:**

...

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

##### **1. Reservation of the right to set a statements aside**

*The first announcement in which a statement subject to Rule 2.5(a) is made must contain prominent reference to any reservation to set it aside (precise details of which must be included). Any subsequent mention by the potential offeror of the statement must be accompanied by a reference to the reservation.*

~~*Where a potential offeror has referred in a statement subject to Rule 2.5(a) to the level of consideration to be paid if an offer is made, that potential offeror will not be allowed subsequently to make an offer for the offeree company at a lower level of consideration other than in wholly exceptional circumstances, or if there has occurred an event which the potential offeror specified in the statement as an event which would enable it to set aside the level of consideration referred to.*~~

*Where a potential offeror has reserved the right to vary the form and/or mix of the consideration referred to in a statement subject to Rule 2.5(a) (but remains bound to a specified minimum level of consideration) and exercises that right, the value of any offer that is made subsequently must be the same as or better than the value of the consideration referred to in that statement, calculated as at the time of the announcement of the firm intention to make an offer. If, during the period ending when the market closes on the first business day after the announcement of the firm intention to make an offer, the value is not maintained, the Panel will be concerned to ensure that the offeror acted with all reasonable care in determining the consideration. If there is a restricted market in the securities offered, or if the amount of securities to be issued of a class already admitted to trading is large in relation to the amount already issued, the Panel may require justification of prices used to determine the value of the offer.*

~~*Where a potential offeror has made a statement of the kind referred to in Rule 2.5(a)(ii), it will not be permitted to make an offer at a higher level of consideration unless there has occurred an event which the potential offeror specified in the statement as an event that would enable it to do so.*~~

*Once it has announced a firm intention to make an offer, an offeror will not be permitted to exercise any right it had previously reserved either to set aside a statement in relation to the level of consideration that it might offer or to vary the form and/or mix of the consideration.*

**Rule 2.6****2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT**

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(d) When an offeror has announced a firm intention to make an offer and it has been announced that a publicly identified potential offeror might make a competing offer (whether that announcement was made prior to or following the announcement of the first offer), the potential offeror must, by a date in the later stages of the offer period to be announced by the Panel 5.00 pm on the 53rd day following the publication of the first offeror's initial offer document, either:

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or
- (ii) announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies.

(See Section 4 of Appendix 7 where the first offeror is proceeding by means of a scheme of arrangement.)

(e) When an offeror has announced a firm intention to make an offer and the offeree company subsequently refers to the existence of a potential competing offeror which has not been identified, the potential competing offeror so referred to must, by a date in the later stages of the offer period to be announced by the Panel 5.00 pm on the 53rd day following the publication of the first offeror's initial offer document, either:

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or
- (ii) confirm to the offeree company that it does not intend to make an offer, in which case the offeree company must promptly announce that fact and the potential competing offeror will ~~then~~ be treated as if it had then made a statement to which Rule 2.8 applies.

(See Section 4 of Appendix 7 where the first offeror is proceeding by means of a scheme of arrangement.)

**NOTES ON RULE 2.6**

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## 2. *Formal sale process*

*Where, prior to an offeror having announced a firm intention to make an offer, the board of the offeree company announces that it is seeking one or more potential offerors for the offeree company by means of a formal sale process, the Panel will normally grant a dispensation from the requirements of Rules 2.4(a) and (b) (but see Note 12 on Rule 8) and Rule 2.6(a), such that any potential offeror which agrees with the offeree company to participate in that process would not be required to be publicly identified under Rule 2.4(a) or (b) and would not be subject to the 28 day deadline referred to in Rule 2.6(a), for so long as it is participating in that process. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.*

## 3. ~~*Date by which announcement required*~~

~~*Where the first offeror is proceeding by means of a contractual offer, the date by which an announcement will be required to be made by or in respect of a potential competing offeror under Rule 2.6(d) or (e) will normally be a date which is on or around 10 days prior to the final day on which the first offeror's offer is capable of becoming or being declared unconditional as to acceptances.*~~

~~*Where the first offeror is proceeding by means of a scheme of arrangement, see Section 4 of Appendix 7.*~~

## Rule 2.7

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

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(c) When a firm intention to make an offer is announced, the announcement must state:

...

(v) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or in respect of which it has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see Note 5 on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell, any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

**(vi) details of any irrevocable commitment or letter of intent procured by the offeror or any person acting in concert with it (see Note 3 on Rule 2.11);**

**(vii) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold and details of any financial collateral arrangements which the offeror or any person acting in concert with it has entered into (see Note 4 on Rule 4.6);**

**(viii)** ... ;

**(ix)** ... ;

**(x)** ... ; **and**

~~**(viii) confirmation that the offeror is on the same day disclosing, or has previously disclosed, the details required to be disclosed by it under Rule 8.1(a) and, where such disclosure is being made on the same day but (in accordance with Note 2(a)(i) on Rule 8) may not include all relevant details in respect of all persons acting in concert with the offeror, confirmation that a further disclosure in accordance with Rule 8.1(a) and Note 2(a)(i) on Rule 8 will be made as soon as possible; and**~~

~~**(ix) a list of the documents published on a website in accordance with Rule 26.1–26.2 and the address of the website on which the documents are published.**~~

### **NOTES ON RULE 2.7**

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#### **3. 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**

A person making a statement that he does not intend to make an offer for a company should make the statement as clear and unambiguous as possible. Except in the circumstances described in Note 2 or otherwise with the consent of the Panel, neither the person making the statement, nor any person who acted in concert with that person, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:

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**NOTES ON RULE 2.8****1. Prior consultation**

*Any person considering making such a statement should consult the Panel in advance, ~~particularly if it is intended to include specific reservations to set aside the statement.~~*

**2. ~~When a statement may be set aside~~ the restrictions will no longer apply**

*~~Except with the consent of the Panel, a statement to which~~ The restrictions in Rule 2.8 applies may be set aside only will no longer apply if:*

*(a) ~~the board of the offeree company so agrees to the statement being set aside. However, ~~Where~~ the statement was made at any time following after the announcement by a third party of a firm intention to make an offer, the statement may not normally be set aside~~ restrictions will only cease to apply with the agreement of the board of the offeree company unless if:*

*(i) that third party offer has been withdrawn or has lapsed; and*

*(ii) in the period following the making of the statement and prior to the third party offer being withdrawn or lapsing, neither the person who made the statement nor any person acting in concert with that person has acquired an interest in any shares 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;*

*(d) the Panel determines that there has been a material change of circumstances; or*

(e) *the statement was made outside an offer period and an event has occurred which was specified in the statement as being an event following which the restrictions set out in Rule 2.8 would enable the statement to be set aside (see Note 1) cease to apply. If a person wishes to specify such an event in a statement to which Rule 2.8 will apply, the Panel should be consulted.*

*The Panel will normally regard a switch by a third party offeror from a scheme of arrangement to a contractual offer in accordance with Section 8 of Appendix 7, or an announcement of its firm intention to do so, as a material change of circumstances under paragraph (d). However, a switch from a contractual offer to a scheme of arrangement will not normally be regarded as a material change of circumstances.*

## **Rule 2.9**

### **2.9 ANNOUNCEMENT OF AN OFFER OR POSSIBLE OFFER TO BE PUBLISHED VIA A RIS**

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#### **NOTES ON RULE 2.9**

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#### **2. Other Rules**

*Announcements made under Rules 2.11, 6.2(b), 7.1, 8 (Notes 6 and 12(a)), 9.1 (Note 9), 11.1 (Note 6), 12.2(b)(ii)(A), 17.1, 24.1, 25.1, 27.1(a), 31.2, 31.6(~~ab~~) (~~Note 1(b)~~), 31.6(c), 31.7 (Note 2), 31.8 (Note), 31.9, 32.1(a), 32.6(a), Appendix 1.6, Appendix 5.5, Appendix 7.3, Appendix 7.6 and Appendix 7.8 must also be published in accordance with the requirements of Rule 2.9.*

## **Rule 2.10**

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

**When an offer period begins, the offeree company must announce, as soon as possible and in any case by ~~9.00~~ 7.15 am on the next business day, details of all classes of relevant securities issued by the company, together with the numbers of such securities in issue. An offeror or publicly identified potential offeror must also announce the same details relating to its relevant securities as soon as possible and in any case by 9.00 7.15 am on the business day following any announcement identifying it as an offeror or potential offeror, unless it has stated that its offer is likely to be solely in cash.**

...

## Rule 2.11

### 2.11 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

(a) During an offer period, if any party to the offer or any person acting in concert with it procures an irrevocable commitment or a letter of intent, the relevant party to the offer must publicly disclose the details in accordance with the Notes on this Rule 2.11 by no later than 12 noon on the following business day.

(b) If any party to ~~the~~an offer or any person acting in concert with it, has procured an irrevocable commitment or a letter of intent prior to the commencement of the offer period, it must publicly disclose the details in accordance with the Notes on this Rule 2.11 by no later than 12 noon on the business day following either the commencement of the offer period or (in the case of an offeror) the date of the announcement that first identifies the offeror as such (as appropriate), and/or prior to midnight on the day before an Opening Position Disclosure is made under Rule 8.1(a) or 8.2(a), the details must be disclosed in the Opening Position Disclosure made by the relevant party to the offer (see Note 5(a) on Rule 8 and the Notes on this Rule 2.11).

~~(c) — If, during the offer period and prior to midnight on the day before an Opening Position Disclosure is made under Rule 8.1(a) or 8.2(a), a party to the offer or any person acting in concert with it procures an irrevocable commitment or a letter of intent and the details are disclosed in accordance with Rule 2.11(a), that disclosure must also include details of any other commitments or letters which have been procured prior to the date of the disclosure and which have not previously been disclosed.~~

~~(dc) ...~~

~~(ed) ...~~

#### NOTES ON RULE 2.11

##### 1. Timing of dDisclosure in firm offer announcement

~~A disclosure required by Rule 2.11(a) must be made by no later than 12 noon on the business day following the date of the transaction.~~

~~No separate disclosure by an offeror is required under Rule 2.11(a) wWhere the relevant information is details required to be disclosed under Note 3 on Rule 2.11 are, pursuant to Rule 2.7(c)(vi), included in an announcement of a firm intention to make an offer made under Rule 2.7 which is published no later than 12 noon on the business day following the date on which the~~

*irrevocable commitment or letter of intent is procured, no separate disclosure is required under Rule 2.11(a) or (b).*

*Similarly, where the details required to be disclosed under Note 3 on Rule 2.11 are included in an announcement of a possible offer which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured, no separate disclosure is required under Rule 2.11(b).*

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### **3. Contents of disclosure**

*A disclosure of the procuring of an irrevocable commitment or a letter of intent must provide full details of the nature of the commitment or letter including:*

...

*(c) in respect of an irrevocable commitment, any outstanding conditions to which it is subject and the circumstances (if any) in which it will cease to be binding; and*

*(d) in the case of an irrevocable commitment or a letter of intent procured prior to the announcement of a firm intention to make an offer, the value-price (and any other material terms) of the possible offer in respect of which the commitment or letter has been procured, which terms the potential offeror will then be bound to in accordance with ~~(See Rule 2.5(a).)~~*

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## **Rule 2.12**

### **2.12 DISTRIBUTION OF ANNOUNCEMENTS TO SHAREHOLDERS, EMPLOYEE REPRESENTATIVES (OR EMPLOYEES) AND PENSION SCHEME TRUSTEES**

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#### **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, 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)~~ 26.1.

## Rule 3.1

### 3.1 BOARD OF THE OFFEREE COMPANY

The board of the offeree company must obtain competent independent advice ~~on~~ 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.

#### NOTES ON RULE 3.1

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3. ~~When no recommendation is given~~ Where the independent adviser is unable to advise whether the financial terms of the offer are fair and reasonable

~~When~~ If the independent adviser considers it impossible to express a view on the merits is unable to advise the board of the offeree company whether the financial terms of an offer (or any alternative offers) are, or are not, fair and reasonable, or to give a firm recommendation in its advice to the board of the offeree company, this must be made known to offeree company shareholders stated and an explanation given in the offeree board circular, including the arguments for acceptance or rejection, emphasising the important factors. The Panel should be consulted in advance about the explanation which is to be given. (See also Note 2 on Rule 25.2.)

~~The Panel should be consulted in such cases.~~

## Rule 7.1

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

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#### NOTE ON RULE 7.1

##### *Potential offerors*

The requirement of this Rule 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), 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).

## **Rule 7.2**

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

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#### **NOTES ON RULE 7.2**

##### **1. Dealings prior to a concert party relationship arising**

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(c) ...

*If such a group of persons includes a principal trader and the aggregate number of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period, the shares are acquired in a client-serving capacity and the number of shares which the principal trader holds in a client-serving capacity does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.*

## **Rule 8**

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

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

...

##### **2. Timing of disclosure**

(a) ***Disclosures by the parties to the offer***

(i) ~~Subject to the following paragraph, a~~ party to the offer must make an Opening Position Disclosure by no later than 12 noon on the day falling 10 business days after the commencement of the offer period or the announcement that first identifies an offeror (as the case may be).

~~However, if an offeror announces a firm intention to make an offer before the deadline in the previous paragraph, it must at the same time make an Opening Position Disclosure in accordance with Rule 8.1(a)(i). In such a case, it may not be practicable in the time available to have made enquiries of all persons acting in concert with the offeror in order to include all relevant details in respect of such persons in the Opening Position Disclosure. In such circumstances, this fact should be stated and a further Opening Position Disclosure, containing all relevant details, should be made as soon as possible thereafter and in any event (except with the consent of the Panel) before the deadline in the previous paragraph. The Panel should be consulted in all such cases.~~

If a party to the offer deals in any relevant securities of the offeree company or any securities exchange offeror before midnight on the day before the ~~relevant~~ deadline in the previous paragraphs above, it must make a Dealing Disclosure (in respect of the dealings and positions of itself alone) in accordance with Rule 8.1(b) or 8.2(b) (as appropriate) and with paragraph (ii) below. However, the party to the offer must also make an Opening Position Disclosure (in respect of the positions of itself and any persons acting in concert with it) by the ~~relevant~~ deadline above.

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3. ***Method of disclosure***

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**(d) Redemptions and purchases of own securities**

If the offeree company or an offeror redeems or purchases its own relevant securities, no separate disclosure will be required under Rule 8 if the information required by Note 5 on Rule 8 is included in an announcement made under Rule 2.10.

...

5. ***Details to be included in the disclosure***

- (a) **Public disclosures (other than Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity)**

...

An Opening Position Disclosure by a party to the offer must also include:

(vii) ... ~~and~~

~~(viii) details of any relevant securities in respect of which that party or any person acting in concert with it has procured an irrevocable commitment or a letter of intent (see Rule 2.11).~~

The interests, short positions, rights to subscribe, dealing arrangements, securities borrowing and lending positions and irrevocable commitments and letters of intent to be disclosed under (ii), (iii), (vi), and (vii) ~~and~~ ~~(viii)~~ above are those determined in accordance with Note 7(d) below.

Subject to the following paragraph, aAny Dealing Disclosure must also include:

~~(ix)~~~~viii~~ the total of the relevant securities in question in which the dealing took place;

~~(ix)~~ the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5(i) below);

~~(ix)~~ if the disclosure is by a person acting in concert with a party to the offer, the identity of the party to the offer concerned; and

~~(ix)~~ the date of the dealing.

However, a Dealing Disclosure by a connected principal trader where the sole reason for the connection is that the principal trader is controlled# by, controls or is under the same control as a connected adviser to an offeror, the offeree company or any person acting in concert with an offeror or the offeree company must include the information specified in Note 5(b) below. The Panel may, where it considers it appropriate, require the person concerned to make more detailed private disclosure to the Panel.

#See Note at end of Definitions Section.



**(b) Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity**

A Dealing Disclosure by an exempt principal trader with recognised intermediary status dealing in a client-serving capacity must include:

- (i) the identity of the person disclosing;
- (ii) the identity of the party to the offer with which the person disclosing is connected;
- (iii) total acquisitions and disposals;
- (iv) the highest and lowest prices paid and received; and
- (v) the date of the dealing.

In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5(i) below).

...

**(f) Owner or controller details**

For the purpose of disclosing identity, the owner or controller of any interest or short position in securities disclosed must be specified, in addition to any other details. The naming of nominees or vehicle companies is insufficient. If the owner or controller of the interest or short position is a trust, details of the trustee(s), the settlor and the beneficiaries of the trust must be disclosed. Where the beneficiaries are a connected group, for example, members of a family, a description of the group will normally be sufficient.

The Panel may require additional information to be disclosed when it appears to be appropriate, for example to identify other persons who have an interest in the securities in question. However, in the case of disclosures by fund managers of dealings on behalf of, or positions held for the account of, discretionary clients, the clients need not be named.

...

**7. Time for calculating a person's interests etc.**

...

(d) The interests, short positions, rights to subscribe, dealing arrangements, and securities borrowing and lending positions, irrevocable commitments and letters of intent to be disclosed under paragraphs (ii), (iii), (vi), and (vii) and (viii) of Note 5(a) on Rule 8 are those existing or outstanding at midnight on the day immediately preceding the date on which the disclosure is made (except in the case of a Dealing Disclosure made on the

same day as the dealing concerned, when the interests etc. to be disclosed are those existing or outstanding immediately following the dealing taking place).

...

## **12. Potential offerors**

(a) *If a potential offeror has been referred to in an announcement by the offeree company but has not been publicly identified as such, or if it is a participant in a formal sale process announced by the offeree company (regardless of whether it was a participant at the time of the announcement), the potential offeror and persons acting in concert with it must disclose any dealings in relevant securities of the offeree company after the time of that announcement (or, if later, after the time at which it becomes a participant in the formal sale process) in accordance with Rule 8.1(b) or Rule 8.4 respectively.*

*At the same time as or before any such Dealing Disclosure, the offeror must also make an announcement that it is considering making an offer, or that it is a participant in the formal sale process, in accordance with Rule 2.9 (see also the Note on Rule 7.1 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)).*

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

*See Rule 2.7(c)(vi) and Rule 2.11 ~~and Note 5(a)(viii) on Rule 8.~~*

## **Rule 9**

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

...

#### **NOTES ON RULE 9.1**

...

## **16. Aggregation of interests across a group and recognised intermediaries**

...

*If such a group of persons includes a principal trader and the aggregate number of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal*

*trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period, the shares are acquired in a client-serving capacity and the number of shares which the principal trader holds in a client-serving capacity does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.*

...

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

##### **1. Vote of independent shareholders on the issue of new securities (“Whitewash”)**

...

*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.*

#### **Rule 13.1**

##### **13.1 SUBJECTIVITY**

**An offer must not normally be subject to conditions or pre-conditions which depend solely on subjective judgements by ~~the directors of the offeror or of the offeree company~~ (as the case may be) or, in either case, its directors or the fulfilment of which is in their hands. ...**

#### **Rule 19.1**

##### **19.1 STANDARDS OF CARE**

...

**NOTES ON RULE 19.1**

...

**5. Quotations**

*A quotation (for example, from a newspaper or ~~a broker's~~ an investment analyst's circular) must not be used by a party to the offer out of context and details of the origin must be included.*

...

**Rule 19.3****19.3 UNACCEPTABLE STATEMENTS**

...

**NOTE ON RULE 19.3*****Statements of support***

*An offeror or the offeree company must not make statements about the level of support from shareholders or other persons unless their up-to-date intentions have been clearly stated to the offeror or the offeree company (as appropriate) or to their respective advisers. The Panel will require any such statement to be verified to its satisfaction. This will normally include the shareholder or other person confirming its support in writing to the relevant party to the offer or its adviser and that confirmation being provided to the Panel. Such confirmation will then be treated as a letter of intent. The Panel will not require separate verification by an offeror where the information required by Note 3 on Rule 2.11 is included in an announcement ~~made under Rule 2.7 of an offer or possible offer~~ which is published no later than 12 noon on the business day following the date on which the letter of intent is procured.*

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

...

**NOTES ON RULE 20.1**

...

**4. Information Circulars published by concert parties (eg brokers) connected advisers etc.**

~~Rule 20.1 does not prevent brokers or connected advisers to, or other persons acting in concert with, the offeree company or an offeror from any party to the offer sending circulars during the offer period to their own investment clients provided such their publication has previously been approved by the Panel in advance. A draft must be sent to the Panel as early as possible and the final version must be sent to the Panel at the time of publication.~~

~~In giving to their own clients material on the companies involved in an offer, persons acting in concert with any party to the offer must bear in mind the essential point that new information must not be restricted to a small group. Accordingly, such material Circulars must not include any statements of fact or opinion derived from information not generally available. Profit forecasts, quantified financial benefits statements, asset valuations and estimates of other figures key to the offer ~~should~~ must be avoided (unless, and then only to the extent that, the offer documents or the offeree board circulars themselves contains such forecasts, statements, valuations or estimates). The status of the person issuing the circular as a person acting in concert with the offeree company or an offeror must be clearly disclosed. ~~Clearance before publication may in many cases be effected by telephone but where there is doubt a draft must be sent to the Panel as early as possible. In all cases, copies of the final version of circulars must be sent to the Panel at the time of publication. Where relevant, the requirements of this Note apply to screen displays.~~~~

...

~~Attention is drawn to paragraph (5) of the definition of acting in concert, as a result of which, for example, this Note will be relevant to brokers who, although not directly involved with the offer, are presumed to be acting in concert with an offeror or the offeree company because the broker is in the same group as the financial adviser to an offeror or the offeree company.~~

...

## **Rule 21.1**

### **21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED**

**During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, the board must not, without the approval of the shareholders in general meeting:**

...

- (b) (i) issue any shares or transfer or sell, or agree to transfer or sell, any shares out of treasury or effect any redemption or purchase by the company of its own shares;**

**Rule 21.2****21.2 INDUCEMENT FEES AND OTHER OFFER-RELATED ARRANGEMENTS**

...

**NOTES ON RULE 21.2**

...

**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~~ 26.2.*

**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:**

- (a) shareholders in the offeree company;**
- (b) persons with information rights; or**
- (c) employee representatives (or employees) of the offeror or the offeree company,**

**pursuant to Rule 2.12, 20.1, 23.1, 24.1, 24.15, 25.1, 26.1, 30.2, ~~30.4~~, 32.1 or 32.6(a), it must be sent, published or made available (as the case may be) to all such persons, including those who are located outside the EEA, unless there is sufficient objective justification for not doing so.**

**Rule 24.1****24.1 THE OFFER DOCUMENT**

...

(b) On the day of publication, the offeror must:

(i) publish the offer document on a website in accordance with Rule ~~26.1-30.4~~; and

### Rule 24.3

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

...

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

...

(xvi) a list of the documents which the offeror has published on a website in accordance with Rules ~~26.1-26.2~~ and ~~26.2-26.3~~ and the address of the website on which the documents are published; and

### Rule 24.4

#### 24.4 INTERESTS AND DEALINGS

...

~~(d) — See also Rule 37.4(b).~~

#### NOTES ON RULE 24.4

...

#### 2. *Aggregation*

...

*Acquisitions and disposals should not be netted off, the highest and lowest prices should be stated and the disclosure should distinguish between the different categories of interests in relevant securities and short positions. A full list of all dealings, together with a draft of the proposed aggregated disclosure, should be sent to the Panel, for its approval, in advance of the publication of the offer documentation and the full list of dealings should be published on a website in accordance with Rule ~~26.3-26.2~~.*

**Rule 25.1****25.1 THE OFFEREE BOARD CIRCULAR**

...

**(b) On the day of publication, the offeree company must:****(i) publish the offeree board circular on a website in accordance with Rule 26.1-30.4; and****Rule 25.4****25.4 INTERESTS AND DEALINGS**

...

**~~(d) See also Rule 37.3(c).~~****Rule 25.7****25.7 OTHER INFORMATION****The offeree board circular must contain:**

...

**(c) a list of the documents which the offeree company has published on a website in accordance with Rules 26.1-26.2 and 26.2-26.3 and the address of the website on which the documents are published; and****Rule 26****RULE 26. DOCUMENTS TO BE PUBLISHED ON A WEBSITE****26.1 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION TO BE PUBLISHED ON A WEBSITE DURING AN OFFER****(a) The following documents, announcements and information must be published on a website by the offeror or offeree company, as relevant, by no later than 12 noon on the business day following the date of the relevant document, announcement or information:****(i) any document or information in relation to an offer sent to shareholders, persons with information rights or other relevant persons in accordance with Rule 30.1; or**



**(ii) any announcement (other than an announcement referred to in Note 8 below) published via a RIS (whether related to the offer or not).**

**(b) Any such document, announcement or information must include the address of the website on which it will be published. This address must be for either the webpage on which the relevant document, announcement or information may be found or a webpage which includes a clear link to the relevant webpage.**

**26.12 DOCUMENTS TO BE PUBLISHED ON A WEBSITE  
FOLLOWING THE ANNOUNCEMENT OF AN FIRM OFFER**

~~Except with the consent of the Panel, copies of t~~**The following documents must be published on a website as soon as possible and in any event by no later than 12 noon on the business day following the announcement of a firm intention to make an offer (or, if later, the date of the relevant document) until the end of the offer (including any related competition reference period):**

...

**26.23 DOCUMENTS TO BE PUBLISHED ON A WEBSITE  
FOLLOWING THE MAKING OF AN OFFER**

~~Except with the consent of the Panel, copies of t~~**The following documents must be published on a website from the time the offer document or offeree board circular, as appropriate, is published (or, if later, the date of the relevant document) until the end of the offer (including any related competition reference period):**

...

**NOTES ON RULE 26**

***1. Copies of documents***

~~A copy of each document published on a website must, on request, promptly be made available by an offeror or the offeree company to the other party and to any competing offeror or potential offeror.~~

**1. Period for which documents etc. to be made available**

Each document, announcement or information required to be published on a website under Rule 26 must continue to be made available on a website free of charge until the end of the offer (including any related competition reference period). Documents, announcements and information published following the end of the offer period which do not relate directly to the offer will not be required to be published on the website.

**2. Website to be used for publication**

*A party to an offer should normally use its own website for publishing documents, announcements and information. If a party to an offer does not have its own website, or intends to use a website maintained by a third party for this purpose, the Panel should be consulted.*

**3. “Read-only” format**

*Documents, announcements and information published on a website must be in a “read-only” format so that they may not be amended or altered in any way.*

**4. Shareholders, persons with information rights and other persons outside the EEA**

*See the Note on Rule 23.2 and Note 3 on Rule 30.4. Offer-related documents, announcements and information published on a website should be capable of being accessed by shareholders, persons with information rights and other relevant persons in all jurisdictions unless there is a sufficient objective justification for restricting access from certain non-EEA jurisdictions on the basis described in the Note on Rule 23.2.*

**5. Amendment etc. of documents published on a website and entering into new documents required to be published on a website**

...

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

...

**7. Equality of information to shareholders**

*Save as expressly permitted by Rule 30.1, the publication of offer-related documents, announcements and information on a website will not satisfy the obligation under Rule 20.1 to make information about companies involved in an offer equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner.*

**8. Announcements not required to be published on a website**

*The following announcements do not need to be published on a website:*

*(a) announcements in relation to notifications made pursuant to the rules of other regulatory regimes in respect of:*

(i) transactions by directors or other persons discharging managerial responsibilities in respect of a company;

(ii) the acquisition or disposal of major shareholdings; and

(iii) disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares (including treasury shares); and

(b) announcements of the number of relevant securities in issue under Rule 2.10.

## Rule 29.5

### 29.5 OPINION AND CONSENT LETTERS

...

(c) *Valuation certificate to be published on a website*

Where a valuation of assets is given in any document published in connection with an offer, the valuation report must be published on a website in accordance with ~~Rule 26.3~~ 26.2, together with an associated report or schedule containing details of the aggregate valuation. Where the Panel is satisfied that such disclosure may be commercially disadvantageous to the company concerned, it will allow the report or schedule to appear in a summarised form. In certain cases, the Panel may require any of these documents to be reproduced in full in a document sent to shareholders and persons with information rights.

## Rule 30.4

### ~~30.4 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION REQUIRED TO BE PUBLISHED ON A WEBSITE~~

~~(a) If an offeror or offeree company, or any person on its behalf:~~

~~(i) sends a document or information in relation to an offer to shareholders, persons with information rights or other relevant persons in accordance with Rule 30.1; or~~

~~(ii) publishes an announcement (whether related to the offer or not) by sending it to a RIS,~~

~~the offeror or offeree company as relevant must, as soon as possible and in any event by no later than 12 noon on the following business day, ensure that a copy is published on a website. Copies of announcements referred to in Note 5 below do not need to be published on a website.~~

~~(b) — A copy of each document, announcement or information required to be published on a website under (a) above must continue to be made available on a website free of charge during the course of the offer (and any related competition reference period). Documents, announcements and information published following the end of the offer period which do not relate directly to the offer will not be required to be published on the website.~~

~~(c) — Any document, announcement or information published in relation to an offer by an offeror or the offeree company in the manner described in (a)(i) or (ii) above (other than the announcements referred to in Note 5 below) must contain a statement providing details of the website on which a copy will be published.~~

#### ***NOTES ON RULE 30.4***

##### ***1. — Website to be used***

*A party to an offer should normally use its own website for publishing copies of documents, announcements and information. If a party to an offer does not have its own website, or proposes to use a website maintained by a third party for this purpose, the Panel should be consulted.*

##### ***2. — “Read-only” format***

*Any document, announcement or information published on a website must be published in a “read-only” format so that it may not be amended or altered in any way.*

##### ***3. — Shareholders, persons with information rights and other persons outside the EEA***

*Offer-related documents, announcements and information published on a website should be capable of being accessed by shareholders, persons with information rights and other relevant persons in all jurisdictions unless there is a sufficient objective justification for restricting access from certain non-EEA jurisdictions on the basis described in the Note on Rule 23.2.*

##### ***4. — Equality of information to shareholders***

*Save as expressly permitted by Rule 30.1, the publication of offer-related documents, announcements and information on a website will not satisfy the obligation under Rule 20.1 to make information about companies involved in an offer equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner.*

~~5. — Announcements not required to be published on a website~~

~~Copies of the following announcements do not need to be published on a website:~~

~~(a) — announcements in relation to notifications made pursuant to the rules of other regulatory regimes in respect of:~~

~~(i) — transactions by directors or other persons discharging managerial responsibilities in respect of a company;~~

~~(ii) — the acquisition or disposal of major shareholdings; and~~

~~(iii) — disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares (including treasury shares); and~~

~~(b) — announcements of the number of relevant securities in issue under Rule 2.10.~~

## Rule 31.5

### 31.5 NO EXTENSION STATEMENTS

(a) A “no extension statement” is a statement that an offer will not be extended beyond a specified date unless it is unconditional as to acceptances.

(b) If an offeror (or its directors, officials or advisers) makes a “no extension statement”, and that statement is not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to extend its offer beyond the stated date, except:

(i) where the right to do so in certain circumstances is specifically reserved at the time the no extension statement is made and those circumstances subsequently arise; or

(ii) in wholly exceptional circumstances.

(c) If an offeror wishes to include a reservation to a no extension statement, the Panel must be consulted.

(d) The provisions of Rule 31.4 will apply in any event.

~~If statements in relation to the duration of an offer such as “the offer will not be extended beyond a specified date unless it is unconditional as to acceptances” (“no extension statements”) are included in documents or announcements published in connection with an offer, or are made by or on behalf of an offeror, its directors, officials or advisers, and not~~

~~withdrawn immediately if incorrect, only in wholly exceptional circumstances will the offeror be allowed subsequently to extend its offer beyond the stated date except where the right to do so has been specifically reserved. The provisions of Rule 31.4 will apply in any event.~~

## **NOTES ON RULE 31.5**

(See also Rule 31.6)

### **1. Firm statements**

~~In general, an offeror will be bound by any firm statement as to the duration of its offer. Any statement of intention will be regarded for this purpose as a firm statement; the expression “present intention” should not be used as it may be misleading.~~

### **21. Reservation of the right to set a no extension statements aside**

~~A no extension statement may be set aside only if the offeror specifically reserved the right at the time the statement was made to set it aside in the circumstances which subsequently arise; this applies whether or not the offer was recommended at the outset.~~

(a) A no extension statement must not be subject to a reservation to set the statement aside which depends solely on subjective judgements by the offeror or its directors or the fulfilment of which is in their hands.

(b) The first document published in connection with an offer in which mention is made of the no extension statement must contain prominent reference to ~~this~~ any reservation to set it aside (precise details of which must also be included in the document). Any subsequent mention by the offeror of the no extension statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details.

(c) Notes 3 and 4 describe examples of specific types of reservation to set a no extension statement aside. However, other types of reservation may also be made (for example, a reservation relating to the recommendation of an increased or improved offer by the board of the offeree company), provided that they comply with the requirements of this Note 1.

### **2. Wholly exceptional circumstances**

~~If the right to set aside ~~the~~ a no extension statement has not been specifically reserved, as set out above, only in wholly exceptional circumstances will the offeror will be allowed to extend its offer only in wholly exceptional circumstances (except as required by Rule 31.4), ~~even if a recommendation from the board of the offeree company is forthcoming.~~~~

### 3. **Competitive situations**

~~Subject to Note 2 above, if a competitive situation arises after a no extension statement has been made, the offeror can choose not to be bound by it and to be free to extend its offer provided that:~~

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

(a) ~~notice make an announcement to this effect is published~~ as soon as possible (and in any event within 4 business days after the day of the firm announcement of the competing offer) and send a notice ~~a notification is sent~~ to offeree company shareholders and persons with information rights at the earliest opportunity; and

(b) give any offeree shareholders who accepted the offer after the date of the no extension statement ~~are given~~ a right of withdrawal for a period of 8 days following the date on which the announcement is made ~~notice is published~~.

(For the purpose of this Note, a competitive situation will normally arise following a public announcement of the existence of a new offeror or potential offeror whether publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)

### 4. ~~Recommendations~~

~~Subject to Note 2 above, the offeror can choose not to be bound by a no extension statement which would otherwise prevent the offeror from making an increased or improved offer that would be recommended for acceptance by the board of the offeree company.~~

### 54. **Rule 31.9 announcements**

~~Subject to Note 2 above, if~~ An offeror may reserve the right to set aside a no increase statement in the event of the offeree company makes making an announcement of the kind referred to in Rule 31.9 after the 39th day following the publication of the initial offer document and after a only if the no extension statement has been is made after that day. If such an announcement is subsequently made by the offeree company and the offeror wishes to set aside its no increase statement, the offeror must, ~~the offeror can choose not to be bound by that statement and to be free to revise its offer if permitted by the Panel under Rule 31.9, provided that notice~~ make an announcement to this effect is published as soon as possible (and in any event within 4 business days after the date of the offeree company announcement) and send a notice ~~a notification is sent~~ to offeree company shareholders and persons with information rights at the earliest opportunity.

## Rule 31.6

### 31.6 FINAL DAY RULE (FULFILMENT OF ACCEPTANCE CONDITION, TIMING AND ANNOUNCEMENT)

(a) Except with the consent of the Panel, an offer (whether revised or not) may not become or be declared unconditional as to acceptances after midnight on the 60th day after the day the initial offer document was published. The Panel's consent will normally only be given ~~granted~~:

(i) ~~in a competitive situation~~ if a competing firm offer has been announced (see Note 24 below); or

(ii) if the board of the offeree company consents to an extension; or

(iii) if there is a significant delay in the decision on whether there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings (see Note 5); or

~~(iiiiv)~~ as provided for in Rule 31.9; or

(iv) if the offeror's receiving agent requests an extension for the purpose of complying with Note 7 on Rule 10; or

(vi) when withdrawal rights are introduced under Rule 13.6.

(b) Any extension to which the Panel consents must be announced by the offeror in accordance with Rule 2.9. The Panel should be consulted as to whether a notification in respect of the extension should also be sent to offeree company shareholders and persons with information rights.

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

~~(ed)~~ Except with the consent of the Panel, on the 60th day (or any other date beyond which the offeror has stated that its offer will not be extended) an announcement should be made by 5.00 pm as to whether the offer is unconditional as to acceptances or has lapsed. Such



announcement should include, if possible, the details required by Rule 17.1 but in any event must include a statement as to the current position in the count. ~~(See Note 2.)~~ The requirement to make an announcement by 5.00 pm should not be reflected in the terms of the offer pursuant to Rule 24.7, but, if there is any question of a delay in the announcement, the Panel should be consulted as soon as practicable. Only in exceptional circumstances will the Panel agree to an offeror's request that this announcement may be made after 5.00 pm.

## NOTES ON RULE 31.6

### 1. Consequential changes to the offer timetable

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

#### 1. Extension of offer under Rule 31.6(a)

~~(a) — It should be noted that the effect of Rule 31.6(a) is that, unless the offer is unconditional as to acceptances by midnight on the final closing date (or the Panel gives permission for the offer to be extended), the offer will lapse. When, however, there is a Code matter outstanding on the final closing date, it may be inappropriate for the offer to become or be declared unconditional as to acceptances or to lapse at that time. In such a case, the Panel may, in addition to the circumstances set out in Rule 31.6(a), give permission for the offer to be extended, but with no extension of the time by which all relevant electronic instructions or documents in respect of acceptances, withdrawals and purchases must be received for the purpose of the acceptance condition, as referred to in Rule 31.6(b) and Rule 34.~~

~~(b) — Any extension to which the Panel consents must be announced by the offeror in accordance with Rule 2.9. The Panel should be consulted as to whether a notification in respect of the extension should also be sent to offeree company shareholders and persons with information rights.~~

#### 2. Rule 31.6(c) announcement

~~Under Rule 31.6(c), an announcement as to whether the offer is unconditional as to acceptances or has lapsed should normally be made by 5.00 pm on the final closing date. This requirement should not be reflected in the terms of the offer pursuant to Rule 24.7, but, if there is any question of a delay in the announcement required by Rule 31.6, the Panel should be consulted as soon as practicable. Only in exceptional circumstances will the Panel agree to an offeror's request that this announcement may be made after 5.00 pm.~~

## **2. Timetable for competing firm offers**

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

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

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

## **4. Extension of “Day 60” after “Day 46”**

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

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

## **35. The CMA and the European Commission**

~~If there is a significant delay in the decision on whether or not there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings, In the case of an extension in accordance with Rule 31.6(a)(iii), the Panel will normally extend “Day 39” (see Rule 31.9) to the second day following the announcement of such the decision on whether there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings with consequent changes to “Day 46” (see Rule 32.1(e)) and “Day 60”.~~

## **4. — Competitive situations**

~~If a competing offer has been announced, both offerors will normally be bound by the timetable established by the publication of the competing offer~~

~~document. In addition, the Panel will extend “Day 60” in accordance with any 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 publication of the competing offer document.~~

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

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

**Rule 31.9**

**31.9 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39**

... If an announcement of the kind referred to in this Rule is made after the 39th day, the Panel will normally be prepared to grant consent to an extension to “Day 46” (see Rule 32.1(c)), “Day 53” (see Rules 2.6(d) and (e)) and/or “Day 60” (see Rule 31.6(a)) as appropriate.

**Rule 32.1**

**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 26.1-30.4; and

...

(c) The offer must be kept open for at least 14 days following the date on which the revised offer document is published. Therefore, no revised offer document may be published in the 14 days ending on the last day the offer is able to become unconditional as to acceptances.\* (See also Rule 31.6 and the Notes on Rule 31.6.)

**NOTES ON RULE 32.1**

...

### 3. *When revision is not permissible\**

*Since an offer must remain open for acceptance for 14 days following the date on which the revised offer document is published, an offeror will generally not be able to revise its offer, and must not place itself in a position where it would be required to revise its offer, in the 14 days ending on the last day its offer is able to become unconditional as to acceptances (see also Rule 31.6 and the Notes on Rule 31.6). Nor must an offeror place itself in a position where it would be required to revise its offer if it has made a no increase statement as defined in Rule 32.2.*

...

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

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

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

## Rule 32.2

### 32.2 NO INCREASE STATEMENTS

**(a) A “no increase statement” is a statement as to the finality of an offer, including a statement that the offer will not be “increased”, “raised”, “amended”, “revised”, “improved” or “changed” and any similar expression.**

**(b) If an offeror (or its directors, officials or advisers) makes a “no increase statement”, and that statement is not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to amend the terms of its offer in any way, even if the amendment would not result in an**

increase of the value of the offer (eg the introduction of a lower securities exchange alternative), except:

(i) where it specifically reserved the right to do so in certain circumstances at the time the no increase statement was made and those circumstances subsequently arise; or

(ii) in wholly exceptional circumstances.

(c) If an offeror wishes to include a reservation to a no increase statement, the Panel must be consulted.

~~If statements in relation to the value or type of consideration such as “the offer will not be further increased” or “our offer remains at xp per share and it will not be raised” (“no increase statements”) are included in documents or announcements published in connection with an offer, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, only in wholly exceptional circumstances will the offeror be allowed subsequently to amend the terms of its offer in any way even if the amendment would not result in an increase of the value of the offer (eg the introduction of a lower paper alternative) except where the right to do so has been specifically reserved.~~

## NOTES ON RULE 32.2

### 1. ~~Firm statements~~

~~In general, an offeror will be bound by any firm statement as to the finality of its offer. In this respect, the Panel will treat any indication of finality as absolute, unless the offeror clearly states the circumstances in which the statement will not apply, and will not distinguish between the precise words chosen, ie the offer is “final” or will not be “increased”, “amended”, “revised”, “improved”, “changed”, and similar expressions will all be treated in the same way. Any statement of intention will be regarded for this purpose as a firm statement; the expression “present intention” should not be used as it may be misleading.~~

### 21. Reservation of the right to set a no increase statements aside

~~A no increase statement may be set aside only if the offeror has specifically reserved the right at the time the statement was made to set it aside in the circumstances which subsequently arise; this applies whether or not the offer was recommended at the outset.~~

(a) A no increase statement must not be subject to a reservation to set the statement aside which depends solely on subjective judgements by the offeror or its directors or the fulfilment of which is in their hands.

(b) The first document published in connection with an offer in which mention is made of the no increase statement must contain prominent

reference to ~~this~~ any reservation to set it aside (precise details of which must also be included in the document). Any subsequent mention by the offeror of the no increase statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details.

(c) Notes 3 and 4 describe examples of specific types of reservation to set a no increase statement aside. However, other types of reservation may also be made (for example, a reservation relating to the recommendation of an increased or improved offer by the board of the offeree company), provided that they comply with the requirements of this Note 1.

## 2. Wholly exceptional circumstances

~~If the right to set aside the a no increase statement has not been specifically reserved, as set out above, only in wholly exceptional circumstances will the offeror will be allowed to increase or amend its offer only in wholly exceptional circumstances. after a no increase statement, even if a recommendation from~~ The agreement of the board of the offeree company is forthcoming or if the fact that the offer is wholly unconditional in all respects will not be regarded as wholly exceptional circumstances.

## 3. Competitive situations

~~Subject to Note 2 above, if a competitive situation arises after a no increase statement has been made, the offeror can choose not to be bound by it and to be free to revise its offer provided that:~~

If the circumstances specified in a reservation made in accordance with Rule 32.2(b)(i) relate to a competitive situation arising and such a situation arises, an offeror which wishes to set aside its no increase statement must:

(a) ~~notice make an announcement to this effect is published~~ as soon as possible (and in any event within 4 business days after the day of the firm announcement of the competing offer) and send a notice ~~a notification is sent~~ to offeree company shareholders and persons with information rights at the earliest opportunity; and

(b) give any shareholders who accepted the offer after the date of the no increase statement ~~are given~~ a right of withdrawal for a period of 8 days following the date on which the announcement is made ~~notice is published~~.\*

(For the purpose of this Note, a competitive situation will normally arise following a public announcement of the existence of a new offeror or potential offeror whether publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)

#### 4. ~~Recommendations~~

~~Subject to Note 2 above, the offeror can choose not to be bound by a no increase statement which would otherwise prevent the offeror from making an increased or improved offer that would be recommended by the board of the offeree company.~~

#### 54. ~~Rule 31.9 announcements~~†

~~Subject to Note 2 above, if An offeror may reserve the right to set aside a no increase statement in the event of the offeree company ~~makes~~ making an announcement of the kind referred to in Rule 31.9 after the 39th day following the publication of the initial offer document ~~and after a~~ only if the no increase statement ~~has been~~ is made after that day. If such an announcement is subsequently made by the offeree company and the offeror wishes to set aside its no increase statement, the offeror must, ~~the offeror can choose not to be bound by that statement and to be free to revise its offer if permitted by the Panel under Rule 31.9, provided that notice~~ make an announcement to this effect is published as soon as possible (and in any event within 4 business days after the date of the offeree company announcement) and send a notice ~~a notification is sent~~ to offeree company shareholders and persons with information rights at the earliest opportunity.~~

#### 65. ~~Schemes of arrangement~~

~~A switch to or from a scheme of arrangement will not normally, of itself, be regarded as an amendment which would be precluded by an earlier no increase statement in relation to the value or type of consideration offered. Therefore, it is not necessary for an offeror making such a statement specifically to reserve the right to switch its offer structure.~~

### Rule 32.5

#### 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 announced in accordance with an auction procedure, the terms of which will be determined and announced by the Panel. That procedure will normally follow the auction procedure set out in Appendix 8, require final revisions to competing offers to be announced by the 46th day following the publication 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 document to be sent to offeree company shareholders and persons with information rights before the expiry of a set period after the last revision to either offer is announced. However, tThe Panel will consider applying any alternative procedure which is agreed between competing offerors and the board of the offeree**

**company. Under any auction procedure, the Panel may set a deadline by which any revised offer document must be sent to offeree company shareholders and persons with information rights.**

**NOTES ON RULE 32.5**

**1. Dispensation from obligation to make an offer**

*The Panel will normally grant a dispensation from the obligation to make 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.*

**32. Schemes of arrangement**

*Where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Panel as to the applicable timetable. The Panel will then determine the date or dates on which final revisions to the competing offers must be announced and on which any auction procedure will commence, taking into account all the relevant circumstances.*

**Rule 32.6**

**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 27 and, at the same time:

(i) publish the circular on a website in accordance with Rule ~~26.1-30.4~~ 26.1-30.4;

**Rule 37.3**

**~~37.3 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEREE COMPANY~~**

~~(a) Shareholders' approval~~



~~During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, no redemption or purchase by the offeree company of its own shares may be effected without the approval of the shareholders at a general meeting. The notice convening the meeting must include information about the offer or anticipated offer. Where it is felt that the redemption or purchase is in pursuance of a contract entered into earlier or another pre-existing obligation, the Panel must be consulted and its consent to proceed without a shareholders' meeting obtained (Notes 1 and 9 on Rule 21.1 may be relevant).~~

~~(b) — *Public disclosure*~~

~~For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company.~~

~~(c) — *Disclosure in the offeree board circular*~~

~~Any offeree board circular published in connection with an offer must state the amount of relevant securities of the offeree company which the offeree company has redeemed or purchased during the period commencing 12 months prior to the offer period and ending with the latest practicable date prior to the publication of the document, and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.~~

## Rule 37.4

### ~~37.4 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEROR COMPANY~~

~~(a) — *Public disclosure*~~

~~For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by an offeror.~~

~~(b) — *Disclosure in the offer document*~~

~~The offer document must state (in the case of a securities exchange offer only) the number of relevant securities of the offeror which the offeror has redeemed or purchased between the start of the offer period and the latest practicable date prior to the publication of the offer document and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.~~

## Appendix 1

### 1 INTRODUCTION

...

(c) Rules 19, 20, ~~and 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.

...

### 4 WHITEWASH CIRCULAR

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

(a) competent independent advice to the board of the offeree company regarding the transaction, the controlling position which it will create and the effect which this will have on shareholders generally;

...

(d) in cases where the potential controlling position will be held by more than one person, the identity of the potential controllers and their individual potential interests in shares in addition to the information required under (ij) below;

...

(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 either:

(i) made a statement that they do 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) entered into an agreement with the company not to make an offer (see Note 5 on the definition of acting in concert), in which case full details of the standstill agreement must be included in the circular.

(fg) ... ;

(gh) ... ;

- (hi) ... ;
- (ij) ... ;
- (jk) ... ;
- (kl) ... ;
- (lm) ... ;
- (mn) ... ;
- (no) ... ; and
- (op) ... .

## Appendix 2

### 6 RULE 6

...

Calculation of the formula price at the time of an acquisition will only be possible if there is co-operation from the board of the offeree company. It is not acceptable for the procedure set out in the previous paragraph to be applied on the basis of estimated net asset values, eg those contained in ~~brokers' investment analysts'~~ brokers' investment analysts' circulars. ...

## Appendix 7

### 4 HOLDING STATEMENTS

(a) ~~If an announcement of the kind described in Rule 2.6(d) or (e) is made during an offer period involving~~ When an offeror has announced a firm intention to make an offer to be implemented by means of a scheme of arrangement and it has been announced that a potential competing offeror might make an offer (see Rules 2.6(d) and (e)), the Panel will normally require the potential offeror to clarify its position by a date in advance of no later than 5.00 pm on the seventh day prior to the date of the shareholder meetings, to be announced by the Panel.

(b) Where appropriate, however, taking into account all relevant ~~circumstances~~ factors, including:

- (i) the interests of offeree company shareholders and the desirability of clarification prior to the shareholder meetings; and
- (ii) the time which the ~~offeror or~~ potential offeror has had to consider its position,

the Panel may permit ~~clarification~~ the potential offeror to clarify its position after the date of the shareholder meetings but before the date of the court sanction hearing.

(c) The Panel will announce the deadline by which clarification is required under paragraph (a) or (b) above.

***NOTE ON SECTION 4***

***Date by which announcement required***

*For the purposes of Section 4(a), the date by which a clarifying announcement will be required to be made will normally be a date which is on or around 10 days prior to the date of the shareholder meetings.*

**Appendix 8**

**APPENDIX 8**

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

**DEFINITIONS AND INTERPRETATION**

**Auction Day 1**

The business day immediately following Day 46.

**Auction Day 2**

The business day immediately following Auction Day 1.

**Auction Day 3**

The business day immediately following Auction Day 2.

**Auction Day 4**

The business day immediately following Auction Day 3.

**Auction Day 5**

The business day immediately following Auction Day 4.

**Auction procedure**

The procedure set out in Sections 2 to 4 below.

## Day 46

The 46th day following the publication by the second competing offeror of its offer document or, if the second competing offeror is proceeding by means of a scheme of arrangement, such date as the Panel shall determine.

### Offer announcement

An announcement of a revised offer by a competing offeror during the auction procedure.

### Revised offer

Any offer which represents an increase in the level of the consideration offered by a competing offeror (including the introduction of a new form of consideration or an alternative offer).

## 1 INTRODUCTION

(a) This Appendix 8 sets out the procedure normally to be followed pursuant to Rule 32.5 when a competitive situation continues to exist at 5.00 pm on Day 46 and no alternative procedure has been agreed between the competing offerors, the board of the offeree company and the Panel.

(b) Prior to the commencement of the auction procedure, the Panel will issue written instructions to each competing offeror and the offeree company setting out the detailed procedural requirements which the Panel considers are necessary to give effect to the auction procedure.

(c) This Appendix 8 assumes that there are two competing offerors. If a competitive situation involves more than two competing offerors, the Panel will modify the auction procedure as it considers appropriate.

## 2 GENERAL

(a) Except with the consent of the Panel, the latest time by which either competing offeror may announce or make a revised offer, other than in accordance with the auction procedure, is 5.00 pm on Day 46.

(b) If a competitive situation continues to exist at 5.00 pm on Day 46, a competing offeror may announce a revised offer thereafter only in accordance with the auction procedure.

(c) If, after 5.00 pm on Day 46, a person other than the then competing offerors announces a firm intention to make an offer for the offeree company, the auction procedure will end and the Panel must be consulted as to the applicable timetable.

(d) A competing offeror which is permitted to announce a revised offer on any day during the auction procedure may make only one offer announcement on the relevant day.

(e) Any offer announcement must comply with the provisions of Rule 2.7.

(f) A competing offeror must not announce a revised offer the consideration of which is calculated by reference to a formula that is determinable by reference to the value of a revised offer by the other competing offeror.

(g) If a competing offeror announces a revised offer which the Panel determines to be contrary to the provisions of the auction procedure, the Panel may declare the revised offer to be invalid, and the competing offeror concerned shall not be permitted to proceed with an offer on the terms set out in the announcement.

(h) Except with the consent of the Panel, during the auction procedure, the competing offerors, the offeree company and any person acting in concert with any of them must not:

(i) make any public statement which could reasonably be expected to affect the orderly operation of the auction procedure; or

(ii) deal in relevant securities of the offeree company or take any steps to procure an irrevocable commitment or letter of intent in relation to either competing offeror's offer or to amend, vary, update or replace any irrevocable commitment or letter of intent previously procured.

(i) Following the end of the auction procedure at 5.00 pm on any of Auction Days 1 to 5, the Panel will make an announcement confirming that the auction procedure has ended.

(j) Between the end of the auction procedure and the end of the offer period, a competing offeror and any person acting in concert with it must not place itself in a position where it would be required to revise its offer. See also Notes 3 and 4 on Rule 32.1.

### 3 AUCTION DAYS 1 TO 4

(a) The auction procedure will commence on Auction Day 1. Either or both of the competing offerors may announce a revised offer on Auction Day 1. If neither competing offeror announces a revised offer on Auction Day 1, the auction procedure will end at 5.00 pm on Auction Day 1.

(b) A competing offeror may announce a revised offer on Auction Day 2 provided that the other competing offeror announced a revised

offer on Auction Day 1. If no such revised offer is announced on Auction Day 2, the auction procedure will end at 5.00 pm on Auction Day 2.

(c) A competing offeror may announce a revised offer on Auction Day 3 provided that the other competing offeror announced a revised offer on Auction Day 2. If no such revised offer is announced on Auction Day 3, the auction procedure will end at 5.00 pm on Auction Day 3.

(d) A competing offeror may announce a revised offer on Auction Day 4 provided that the other competing offeror announced a revised offer on Auction Day 3. If no such revised offer is announced on Auction Day 4, the auction procedure will end at 5.00 pm on Auction Day 4.

(e) If a competing offeror is permitted to announce a revised offer on any of Auction Days 1 to 4 and wishes to do so, that competing offeror must submit an offer announcement to the Panel before 4.00 pm on the relevant day.

(f) Unless the Panel otherwise consents or directs, if the relevant competing offeror submits an offer announcement to the Panel in accordance with paragraph (e), that competing offeror must announce the revised offer by submitting that offer announcement, in the same form as the announcement submitted to the Panel, to a RIS before 5.00 pm on the relevant day, embargoed for publication until that time.

(g) If the relevant competing offeror does not submit an offer announcement to the Panel in accordance with paragraph (e) on any of Auction Days 1 to 4, that competing offeror may not then announce a revised offer on that day.

#### 4 AUCTION DAY 5

(a) If a competing offeror which is permitted to announce a revised offer on Auction Day 4 does so, either or both of the competing offerors may announce a revised offer on Auction Day 5. In any event, the auction procedure will then end at 5.00 pm on Auction Day 5.

(b) If either competing offeror wishes to announce a revised offer on Auction Day 5, that competing offeror must submit an offer announcement to the Panel before 4.00 pm on that day. The offer announcement may be submitted subject to a condition that the revised offer will be announced only if the other competing offeror also submits an offer announcement to the Panel before 4.00 pm on that day (but not subject to any other conditions, such as the level of a competing offeror's revised offer). If an offer announcement is submitted to the Panel subject to such a condition, the Panel will, before 4.30 pm on Auction Day 5, notify the relevant competing offeror whether the condition has been satisfied. If both competing offerors submit an offer announcement subject to a condition as referred to in this paragraph (b), both conditions will be deemed to have been satisfied.

**(c) Unless the Panel otherwise consents or directs, if a competing offeror submits an offer announcement to the Panel on Auction Day 5 in accordance with paragraph (b) and either:**

**(i) the offer announcement is not subject to a condition as referred to in paragraph (b); or**

**(ii) the offer announcement is subject to a condition as referred to in paragraph (b) and the Panel notifies that competing offeror that the condition has been satisfied,**

**that competing offeror must announce the revised offer by submitting that offer announcement, in the same form as the announcement submitted to the Panel, to a RIS before 5.00 pm on that day, embargoed for publication until that time.**