

# THE TAKEOVER PANEL

## Instrument 2021/2

### Gender neutrality

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, the Panel and, in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee, hereby make this instrument containing rules.

The Takeover Code (the “**Code**”) is amended, with effect from 5 July 2021, in accordance with the Appendix. In the Appendix, underlining indicates new text and striking-through indicates deleted text.

In accordance with section 4(b) of the Introduction to the Code, the Code Committee hereby makes the amendments set out in the Appendix, other than the amendments to section 4(a) of the Introduction to the Code, which are hereby made by the Panel. The amendments to the Rules of Procedure of the Hearings Committee in Appendix 9 of the Code are made by the Code Committee in consultation with the Hearings Committee.

**Michael Crane QC**  
**Chairman of the Panel**  
**for and on behalf of the Panel**

**Richard Murley**  
**Chairman of the Code Committee**  
**for and on behalf of the Code Committee**

**14 April 2021**

## APPENDIX

### INTRODUCTION

#### 4 THE PANEL AND ITS COMMITTEES

...

##### (a) The Panel

...

The Panel comprises up to 36 members:

- (i) the Chairman, who is appointed by the Panel;
- (ii) up to three Deputy Chairmen, who are appointed by the Panel;

...

The Chairman and at least one Deputy Chairman are designated as members of the Hearings Committee. ...

...

The Chairman and the Deputy Chairmen do not have alternates.

...

#### 10 ENFORCING THE CODE

...

##### (b) Compliance rulings

...

- (B) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of ~~his~~ the person is or would be a breach of rules; or

...

#### 11 DISCIPLINARY POWERS

...

##### (b) Sanctions or other remedies for breach of the Code

...

- (v) publish a Panel Statement indicating that the offender is someone who, in the Hearings Committee's opinion, is not likely to comply with the Code. The Panel Statement will normally indicate that this sanction will remain effective for only a specified period. The FCA Handbook and the rules of certain professional bodies oblige their members, in certain circumstances, not to act for the person in question in a transaction subject to the Code, including a dealing in relevant securities requiring disclosure under Rule 8 (so called "cold-shouldering"). For example, the FCA Handbook requires a person

authorised under the Financial Services and Markets Act 2000 (“FSMA”) not to act, or continue to act, for any person in connection with a transaction to which the Code applies if the firm has reasonable grounds for believing that the person in question, or ~~his~~ the person’s principal, is not complying or is not likely to comply with the Code.

## DEFINITIONS

### Acting in concert

...

### NOTES ON ACTING IN CONCERT

...

#### 2. **Affiliated persons**

...

*For these purposes, a person’s rights as regards voting, appointment or removal shall include the rights of any other affiliated person and those of any person or entity acting in ~~his~~ their own name but on behalf of that person or of any other affiliated person.*

...

#### 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~~ the person or the directors 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:*

...

#### 9. **Irrevocable commitments**

*A person will not normally be treated as acting in concert with an offeror or the offeree company by reason only of giving an irrevocable commitment. However, the Panel will consider the position of such a person in relation to the offeror or the offeree company (as the case may be) in order to determine whether ~~he~~ the person is acting in concert if either:*

...

### Dealings

A dealing includes the following:

...

(h) any other action resulting, or which may result, in an increase or decrease in the number of securities in which a person is interested or in respect of which ~~he~~the person has a short position.

...

### **Interests in securities**

...

In particular, a person will be treated as having an interest in securities if the person:

- (1) ~~he~~ owns them;
- (2) ~~he~~ has the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to them or has general control of them;
- (3) by virtue of any agreement to purchase, option or derivative ~~he~~:
  - (a) has the right or option to acquire them or call for their delivery; or
  - (b) is under an obligation to take delivery of them,

whether the right, option or obligation is conditional or absolute and whether it is in the money or otherwise; or

- (4) ~~he~~ is party to any derivative:
  - (a) whose value is determined by reference to their price; and
  - (b) which results, or may result, in ~~his~~the person having a long position in them; and
- (5) in the case of Rule 5 only, ~~he~~ has received an irrevocable commitment in respect of them.

...

### **NOTES ON INTERESTS IN SECURITIES**

...

#### **3. Number of securities concerned**

...

(c) *Where a derivative is not referenced to any stated number (or maximum number) of securities, a person will normally be treated as interested in the gross number of securities to changes in the price of which ~~he~~the person has, or may have, economic exposure.*

#### **4. Securities borrowing and lending**

*If a person has borrowed or lent securities, ~~he~~the person will normally be treated as interested in any securities which ~~he~~it has lent but (except in the circumstances set out in Note 17 on Rule 9.1) will not normally be treated as interested in any securities which ~~he~~it has borrowed. If a person has on-lent securities which ~~he~~it has borrowed, ~~he~~it will not normally be treated as interested in those securities.*

## 5. **New shares**

*Where a person holds securities convertible into, or warrants or options in respect of, new shares, ~~he~~the person will be treated as interested in those securities, warrants or options but will not be treated as interested in the new shares which may be issued upon conversion or exercise. However, the acquisition of new shares on conversion or exercise of any convertible securities, warrants or options will be treated as an acquisition of an interest in the new shares which are then issued.*

## 6. **Proxies and corporate representatives**

*A person will not be treated as having an interest in securities by reason only that ~~he~~the person has been appointed as a proxy to vote at a specified general or class meeting of the company concerned, or has been authorised by a corporation to act as its representative at any general or class meeting or meetings.*

...

## 9. **Acquisitions of interests in securities**

...

*(b) A person will not be treated as acquiring an interest in securities which are the subject of an irrevocable commitment received by ~~him~~the person as a result only of paragraph (3) of the definition of interests in securities.*

## Rule 2.10

### 2.10 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

...

**(c) If a person who has given an irrevocable commitment or a letter of intent either becomes aware that ~~he~~it will not be able to comply with the terms of that commitment or letter or no longer intends to do so, that person must:**

## Rule 4

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

...

**(ii) make any loan to a person to assist ~~him~~the person in acquiring any such interest save for lending in the ordinary course of business and on normal commercial terms to persons with which they have an established customer relationship; or**

...

### 4.6 SECURITIES BORROWING AND LENDING TRANSACTIONS BY OFFERORS, THE OFFEREE COMPANY AND THEIR CONCERT PARTIES

...

**NOTES ON RULE 4.6**

...

**2. Notice in lieu of disclosure**

Where a person subject to Rule 4.6 wishes to enter into or take action to unwind more than one lending transaction in respect of relevant securities of a securities exchange offeror or, with the consent of the Panel, the offeree company, the Panel may instead require that person to give public notice that ~~he~~it might do so.

**Rule 5****RULE 5. TIMING RESTRICTIONS ON ACQUISITIONS**

NB For the purposes of this Rule 5 only, the number of shares in which a person will be treated as having an interest includes any shares in respect of which ~~he~~the person has received an irrevocable commitment (see paragraph (5) of the definition of interests in securities).

**5.1 RESTRICTIONS**

Except as permitted by Rule 5.2:

(a) when a person (which for the purpose of Rule 5 includes any persons acting in concert with ~~him~~that person) is interested in shares which in the aggregate carry less than 30% of the voting rights of a company, ~~he~~that person may not acquire an interest in any other shares carrying voting rights in that company which, when aggregated with the shares in which ~~he~~that person is already interested, would carry 30% or more of the voting rights; and

(b) when a person is interested in shares which in the aggregate carry 30% or more of the voting rights of a company but does not hold shares which carry more than 50% of the voting rights, ~~he~~that person may not acquire an interest in any other shares carrying voting rights in that company. See Note 5.

**NOTES ON RULE 5.1**

...

**5. Maintenance of the percentage of the shares in which a person is interested**

The restrictions in this Rule do not apply to an acquisition of an interest in shares which would not increase the percentage of the shares carrying voting rights in which that person is interested, eg if a shareholder takes up ~~his~~its entitlement under a fully underwritten rights issue or if a person acquires shares on exercise of a call option.

...

**7. Gifts**

If a person receives a gift of shares or an interest in shares which takes the aggregate number of shares carrying voting rights in which ~~he~~the person is interested to 30% or more, ~~he~~the person must be consulted. (See also Note 3 on Rule 9.5.)

...

**5.3 ACQUISITIONS FROM A SINGLE SHAREHOLDER - CONSEQUENCES**

...

**NOTES ON RULE 5.3****1. If a person's interests are reduced**

*A person who is restricted by this Rule from making further acquisitions will cease to be so restricted if the aggregate number of shares carrying voting rights in which ~~he-it~~ is interested falls below 30% (in which case ~~he-it~~ will become subject to Rule 5.1(a)).*

**2. Rights or scrip issues and "whitewashes"**

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

**5.4 ACQUISITIONS FROM A SINGLE SHAREHOLDER - DISCLOSURE**

...

**(b)** any shares of the company in which ~~he-the person~~ has an interest or in respect of which ~~he-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 position (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be disclosed.

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

...

**NOTES ON RULE 6**

...

**4. Highest price paid**

...

*(a) in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, ~~his-the purchaser's~~ broker acting in an agency capacity) and the vendor (or principal trader) is struck;*

## Rule 8

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

...

*A Dealing Disclosure is required after the person concerned deals in relevant securities of any party to the offer. If a party to the offer or any person acting in concert with it deals in relevant securities of any party to the offer, it must make a Dealing Disclosure by no later than 12 noon on the business day following the date of the relevant dealing. If a person is, or becomes, interested in 1% or more of any class of relevant securities of any party to the offer, ~~he~~ the person must make a Dealing Disclosure if ~~he~~ it deals in any relevant securities of any party to the offer (including by means of an option in respect of, or a derivative referenced to, relevant securities) by no later than 3.30 pm on the business day following the date of the dealing. Dealing Disclosures are required to contain details of the interests or short positions in, or rights to subscribe for, any relevant securities of the party to the offer in whose securities the person disclosing has dealt as well as the person's positions (if any) in the relevant securities of any other party to the offer, unless these have previously been published under Rule 8 (and have not changed).*

...

**8.3 DISCLOSURE BY PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE**

...

**(b) Any person who is (or as a result of any dealing becomes) interested (directly or indirectly) in 1% or more of any class of relevant securities of the offeree company or any securities exchange offeror must make a public Dealing Disclosure if ~~he~~ the person deals in any relevant securities of the offeree company or any securities exchange offeror during an offer period.**

...

**(d) If a person manages investment accounts on a discretionary basis, ~~he~~ that person, and not the person on whose behalf the relevant securities (or interests in relevant securities) are managed, will be treated for the purpose of this Rule as interested in the relevant securities concerned. Except with the consent of the Panel, where more than one discretionary investment management operation is conducted in the same group, the interests in relevant securities of all such operations will be treated for the purpose of this Rule as those of a single person and must be aggregated (see Note 8 below).**

...

**8.4 DISCLOSURE BY CONCERT PARTIES**

**A person acting in concert with any party to an offer must make a public Dealing Disclosure if ~~he~~ that person deals in any relevant securities of the offeree company or any securities exchange offeror during an offer period for ~~his~~ its own account or for the account of discretionary investment clients. (See also Note 12 below.)**

...

**NOTES ON RULE 8**

...



## 2. **Timing of disclosure**

...

### (b) **Disclosures by persons with interests in securities representing 1% or more**

(i) ...

*However, if a person required to make an Opening Position Disclosure under Rule 8.3(a) deals in any relevant securities of the offeree company or any securities exchange offeror before midnight on the day before the deadline in the previous paragraph, ~~he~~it must instead make a Dealing Disclosure under Rule 8.3(b) by no later than 3.30 pm on the business day following the date of the dealing. In such a case, it will not also be necessary to make a separate Opening Position Disclosure under Rule 8.3(a).*

...

### (c) **Disclosures by concert parties**

(i) *A person acting in concert with a party to the offer does not need to make an Opening Position Disclosure itself. Instead, details of the person's positions should be included in the Opening Position Disclosure made by the party to the offer with which ~~he~~it is acting in concert (see Note 5(a)(vii) below).*

...

## 4. **Disclosure in relation to more than one party**

### (a) **Opening Position Disclosures**

...

*Where a person is disclosing details in respect of more than one party to the offer at the same time, ~~he must use a separate disclosure form~~ must be used in respect of each such party.*

### (b) **Dealing Disclosures**

...

*Where a person is disclosing details in respect of more than one party to the offer at the same time, ~~he must use a separate disclosure form~~ must be used in respect of each such party.*

...

## 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)**

*Any public disclosure under Rule 8 (other than a Dealing Disclosure by an exempt principal trader with recognised intermediary status dealing in a client-serving capacity) must include:*

...

(ii) details of any relevant securities of the offeree company or the offeror (as the case may be) in which the person making the disclosure has an interest or in respect of which ~~he-it~~ has a right to subscribe, in each case specifying the nature of the interests or rights concerned and the relevant percentages. Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be disclosed;

...

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

...

(c) A person will be treated as interested in relevant securities for the purposes of this Note 7, and Rule 8 generally, if ~~he-it~~ has disposed of an interest in relevant securities before midnight on the date in question but there exists an agreement, arrangement or understanding, formal or informal, of any nature (but not itself amounting to an interest in the securities) as a result of which ~~he-the person is~~ entitled, or would expect to be able, to acquire an interest in the securities concerned (or equivalent securities) thereafter.

...

#### **8. Discretionary fund managers**

The principle normally applied by the Panel is that where the investment decision is made by a discretionary fund manager, ~~he the discretionary fund manager~~, and not the person on whose behalf the fund is managed, will be treated as interested in (or having a short position in or right to subscribe for), or having dealt in, the relevant securities concerned. For that reason, Rule 8.3(d) requires a discretionary fund manager to aggregate the investment accounts which ~~he-it~~ manages for the purpose of determining whether ~~he-it~~ has an obligation to disclose. The beneficial owner would not normally, therefore, be concerned with disclosure to the extent that ~~his-the~~ investment is managed on a discretionary basis. However, where any of the funds managed on behalf of a beneficial owner are not managed by the fund manager originally contracted to do so but are managed by a different independent third party who has discretion regarding dealing, voting and offer acceptance decisions, the fund manager to whom the management of the funds has been sub-contracted (and not the originally contracted fund manager) is required to aggregate those funds and to comply with the relevant disclosure obligations accordingly.

### **Rule 9**

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

Except with the consent of the Panel, when:

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

(b) any person, together with persons acting in concert with ~~him~~ that person, is interested in shares which in the aggregate carry not less than 30% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights and such person, or any person acting in concert with ~~him~~ that person, acquires an interest in any other shares which increases the percentage of shares carrying voting rights in which ~~he~~ that person is interested,

...

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

...

##### **1. Coming together to act in concert**

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

...

##### **2. Collective shareholder action**

*The Panel does not normally regard the action of shareholders voting together on a particular resolution as action which of itself indicates that such ~~parties~~ persons are acting in concert. However, the Panel will normally presume shareholders who requisition or threaten to requisition the consideration of a board control-seeking proposal at a general meeting, together with their supporters as at the date of the requisition or threat, to be acting in concert with each other and with the proposed directors. Such ~~parties~~ persons will be presumed to have come into concert once an agreement or understanding is reached between them in respect of a board control-seeking proposal with the result that subsequent acquisitions of interests in shares by any member of the group could give rise to an offer obligation.*

...

*If, on this analysis, there is no relationship between any of the proposed directors and any of the activist shareholders or their supporters, or if any such relationship is insignificant, the proposal will not be considered to be board control-seeking such that the ~~parties~~ persons will not be presumed to be acting in concert and it will not be necessary for the factors set out at paragraphs (b) to (f) below to be considered. ...*

...

*In determining whether it is appropriate for such ~~parties~~ persons to be held no longer to be acting in concert, the Panel will take account of a number of factors, including the following:*

(a) *whether the ~~parties~~ persons have been successful in achieving their stated objective;*

(b) *whether there is any evidence to indicate that the ~~parties~~ persons should continue to be held to be acting in concert;*

...

**4. Acquisition of interests in shares by members of a group acting in concert**

...

*When the group is interested in shares carrying 30% or more of the voting rights in a company but does not hold shares carrying more than 50% of such voting rights, an offer obligation will arise if an interest in any other shares carrying voting rights is acquired from non-members of the group. When the group holds shares carrying over 50% of the voting rights in a company, no obligations normally arise from acquisitions by any member of the group. However, subject to considerations similar to those set out in the previous paragraph, the Panel may regard as giving rise to an obligation to make an offer the acquisition by a single member of the group of an interest in shares sufficient to increase the shares carrying voting rights in which ~~he~~ the member of the group is interested to 30% or more or, if ~~he~~ the member of the group is already interested in 30% or more, which increases the percentage of shares carrying voting rights in which ~~he~~ the member of the group is interested.*

...

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

...

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

...

**7. Placings and other arrangements**

*When a person is to acquire an interest in shares which will result in ~~his~~ that person being interested in shares carrying 30% or more of the voting rights of a company, the Panel will consider waiving the requirements of this Rule if firm arrangements are made for the number of shares carrying voting rights in which ~~he~~ that person is interested to be reduced to below 30% prior to the acquisition (for example, by a placing of shares) or, in certain exceptional circumstances, if an undertaking is given to make such a reduction within a very short period after the acquisition. In all such cases, the Panel must be consulted in advance. The Panel will be concerned to ensure that none of the persons with whom the acquirer enters into transactions in order to reduce ~~his~~ its interests is acting in concert with the acquirer; for example, an obligation under this Rule will not be avoided by placing shares with a number of persons having a common link, such as the discretionary clients of a fund manager who would be connected with the acquirer if ~~he~~ it were an offeror (unless, in such circumstances, the fund manager would have exempt status). (See also Rule 9.7.)*

...

## 10. Convertible securities, warrants and options

...

Where securities with conversion or subscription rights were issued at a time when no offer obligation on exercise of such rights would arise and no independent shareholders' approval was obtained, the Panel will consider the case on its merits and will have regard, inter alia, to the votes cast on any relevant resolution, the number of shares concerned and the attitude of the board of the company. It is always open to the holder of such rights to dispose of sufficient rights so that, on exercise, the shares in which ~~he~~the holder would be interested would together carry less than 30% of the voting rights in the company. In circumstances where such rights could not be transferred prior to exercise, the Panel would consider waiving the offer obligation arising upon an exercise of rights provided there was an undertaking to reduce the number of shares carrying voting rights in which ~~he~~the holder would be interested to below 30% within a reasonable time. (See also Rule 9.7.)

...

## 12. Gifts

If a person receives a gift of shares or an interest in shares which takes the aggregate number of shares carrying voting rights in which ~~he~~the person is interested to 30% or more, ~~he must consult the Panel~~ must be consulted. (See also Note 3 on Rule 9.5.)

...

## 17. Borrowed or lent shares

For the purpose of Rule 9.1, if a person has borrowed or lent shares ~~he~~the person will be treated as interested in such shares save for any borrowed shares which ~~he~~it has either on-lent or sold. A person must consult the Panel before borrowing or acquiring an interest in shares which, when taken together with shares (including lent shares) in which ~~he~~that person or any person acting in concert with ~~him~~that person is already interested, and shares already borrowed by ~~him~~that person or any person acting in concert with ~~him~~that person, might result in an obligation to make a mandatory offer being triggered. Where a person intends to borrow and lend shares on the same day, a mandatory offer will normally be required only if this will result in an increase in ~~his~~the person's net borrowing position, or that of any person acting in concert with ~~him~~it, as at midnight on that day. See also Note 2 on Rule 9.3.

## 18. Changes in the nature of a person's interest

Subject to Note 2 on Rule 9.3, for the purpose of this Rule 9.1, a person will not normally be treated as having acquired an interest in shares as a result only of a transaction under which the number of shares in which ~~he~~the person is interested under the different paragraphs of the definition of interests in securities changes but the aggregate number of shares in which ~~he~~it is interested following the transaction remains the same (for example, where the person acquires shares on exercise of a call option).

However, a person who was interested in any shares by virtue of paragraph (3) or paragraph (4) of the definition of interests in securities on 20 May 2006 (when such interests first become relevant for the purpose of Rule 9.1) will normally be treated as having acquired an interest in shares if ~~he~~the person subsequently becomes interested in such shares by virtue of paragraph (1) or paragraph (2) of the definition of interests in securities.

...

## 9.2 OBLIGATIONS OF OTHER PERSONS

In addition to the person specified in Rule 9.1, each of the principal members of a group of persons acting in concert with ~~him~~that person may, according to the circumstances of the case, have the obligation to extend an offer.

### NOTE ON RULE 9.2

#### *Prime responsibility*

*The prime responsibility for making an offer under this Rule normally attaches to the person who makes the acquisition which imposes the obligation to make an offer. If such person is not a principal member of the group acting in concert, the obligation to make an offer may attach to the principal member or members and, in exceptional circumstances, to other members of the group acting in concert. This could include a member of the group who at the time when the obligation arises does not have any interest in shares. In this context, the Panel will not normally regard the underwriter of a mandatory offer, by virtue of ~~his~~the underwriting alone, as being a member of a group acting in concert and, therefore, responsible for making the offer (but see Note 3 on the definition of acting in concert).*

...

## 9.5 CONSIDERATION TO BE OFFERED

...

### NOTES ON RULE 9.5

...

#### 2. *Calculation of the price*

(a) *The price paid for any acquisition of an interest in shares will be determined as follows:*

*(i) in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, ~~his~~the purchaser's broker acting in an agency capacity) and the vendor (or principal trader) is struck;*

...

### NOTES ON DISPENSATIONS FROM RULE 9

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

*(See Appendix 1 for Guidance Note)*

*When the issue of new securities as consideration for an acquisition or a cash subscription would otherwise result in an obligation to make a general offer under this Rule, the Panel will normally waive the obligation if there is an independent vote at a shareholders' meeting. The requirement for a general offer will also be waived, provided there has been a vote of independent shareholders, in cases involving the underwriting of an issue of shares. If an underwriter incurs an obligation under this*

Rule unexpectedly, for example as a result of an inability to sub-underwrite all or part of ~~his~~its liability, the Panel should be consulted.

...

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

...

When, following enforcement, a lender sells all or part of a shareholding, the provisions of this Rule will apply to the purchaser. Although a receiver, liquidator or administrator of a company is not required to make an offer when ~~he~~it acquires an interest in shares carrying 30% or more of the voting rights in another company, the provisions of the Rule apply to a purchaser from such a person.

...

## **4. Inadvertent mistake**

If, due to an inadvertent mistake, a person incurs an obligation to make an offer under this Rule, the Panel will not normally require an offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with ~~him~~it, so that the percentage of shares carrying voting rights in which the person, together with persons acting in concert with ~~him~~that person, is interested is reduced to below 30% in a manner satisfactory to the Panel. (See also Rule 9.7.)

### **Rule 11.1**

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

...

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

#### **1. Price**

...

(a) in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, ~~his~~the purchaser's broker acting in an agency capacity) and the vendor (or principal trader) is struck;

### **Rule 16.1**

#### **16.1 SPECIAL DEALS WITH FAVOURABLE CONDITIONS**

...

##### **NOTES ON RULE 16.1**

...

**2. Offeree company shareholders' approval of certain transactions — eg disposal of offeree company assets**

*In some cases, certain assets of the offeree company may be of no interest to the offeror. There is a possibility if a person interested in shares in the offeree company seeks to acquire the assets in question that the terms of the transaction will be such as to confer a special benefit on ~~him~~ the person; in any event, the arrangement is not capable of being extended to all shareholders. The Panel will normally consent to such a transaction, provided that the independent adviser to the offeree company publicly states that in ~~his~~ its opinion the terms of the transaction are fair and reasonable and the transaction is approved at a general meeting of the offeree company's shareholders. At this meeting the vote must be a separate vote of independent shareholders and must be taken on a poll. Where a sale of assets takes place after the offer has become unconditional, the Panel will be concerned to see that there was no element of pre-arrangement in the transaction.*

...

**3. Finders' fees**

*This Rule also covers cases where a person interested in shares in an offeree company is to be remunerated for the part that ~~he~~ the person has played in promoting the offer. The Panel will normally consent to such remuneration, provided that the interest in shares is not substantial and it can be demonstrated that a person who had performed the same services, but had not at the same time been interested in offeree company shares, would have been entitled to receive no less remuneration.*

**Rule 18**

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

An offeror may not require a shareholder as a term of ~~his~~ its acceptance of an offer to appoint a proxy to vote in respect of ~~his~~ its shares in the offeree company or to exercise any other rights or take any other action in relation to those shares unless the appointment is on the following terms, which must be set out in the offer document:

**Rule 19.2**

**19.2 RESPONSIBILITY**

...

**NOTES ON RULE 19.2**

**1. Delegation of responsibility**

...

*If detailed supervision of any document has been delegated to a committee of the board, each ~~of the remaining directors of the company~~ must:*

*(a) ~~\_\_\_\_\_~~ reasonably believe that the ~~persons to whom supervision has been delegated~~ are committee is competent to carry ~~it out~~ the supervision; and*



~~(b) must have disclosed to the committee all relevant facts directly relating to himself the director (including his the director's close relatives and his and their any related trusts) and all other relevant facts known to him and relevant opinions held by him the director which, to the best of his the director's knowledge and belief, either are not known to any member of the committee or, in the absence of his the director specifically drawing attention thereto, are unlikely to be considered by the committee during the preparation of the document.~~

## Rule 22

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

...

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

##### **1. Qualifying periods**

*Provisions in Aarticles of Aassociation which lay down a qualifying period after registration during which the registered holder cannot exercise his-its votes are highly undesirable.*

## Rule 24

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

...

**(b) if the offeror is other than a company referred to in (a) above, the offer document must contain:**

...

**(ii) in respect of any person who has made (or proposes to make or increase) an investment in the offeror for the purposes of the offer such that ~~he the person~~ has or will have a potential direct or indirect interest in any part of the capital of the offeree company which the Panel regards as equity capital, details of ~~his the person's~~ identity and ~~of his~~ interest in the offeror and such further information as the Panel may require in the particular circumstances of the case (see Note 2); and**

**(iii) in respect of any person not included in (ii) above whose pre-existing interest in the offeror is such that ~~he the person~~ has a potential direct or indirect interest of 5% or more in any part of the capital of the offeree company which the Panel regards as equity capital, details of ~~his the person's~~ identity and ~~of his~~ interest in the offeror and such further information as the Panel may require in the particular circumstances of the case (see Note 2);**

...

## 24.4 INTERESTS AND DEALINGS

### (a) The offer document must state:

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

## Rule 25

### 25.2 VIEWS OF THE OFFEREE BOARD ON THE OFFER, INCLUDING THE OFFEROR'S PLANS FOR THE COMPANY AND ITS EMPLOYEES

...

#### NOTES ON RULE 25.2

...

#### 4. Conflicts of interest

~~Where a~~ A director who has a conflict of interest, ~~he~~ should not normally be joined with the remainder of the board in the expression of its views on the offer and the nature of the conflict should be clearly explained. Depending on the circumstances, such a director may have to make the responsibility statement required by Rule 19.2, appropriately amended to make it clear that ~~he~~the director does not accept responsibility for the views of the board on the offer.

#### 5. Management buy-outs

If the offer is a management buy-out or similar transaction, a director will normally be regarded as having a conflict of interest where it is intended that ~~he~~the director should have any continuing role (whether in an executive or non-executive capacity) in either the offeror or offeree company in the event of the offer being successful.

...

## 25.4 INTERESTS AND DEALINGS

### (a) The offeree board circular must state:

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

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

...

**NOTES ON RULE 37.1**

...

**2. Acquisitions of interests in shares preceding a redemption or purchase**

*The exception in Note 1 will not apply, and an obligation to make a mandatory offer may therefore be imposed, if a person (or any relevant member of a group of persons acting in concert) has acquired an interest in shares at a time when ~~he~~the person had reason to believe that such a redemption or purchase of its own shares by the company would take place. This Note will not normally be relevant unless the relevant person has knowledge that a redemption or purchase for which requisite shareholder authority exists is being, or is likely to be, implemented (whether in whole or in part).*

**Appendix 1****APPENDIX 1****WHITEWASH GUIDANCE NOTE**

...

**3 DISQUALIFYING TRANSACTIONS**

...

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

**Appendix 3****APPENDIX 3****DIRECTORS' RESPONSIBILITIES AND CONFLICTS OF INTEREST GUIDANCE NOTE****1 DIRECTORS' RESPONSIBILITIES**

**While a board of directors may delegate the day-to-day conduct of an offer to individual directors or a committee of directors, the board as a whole must ensure that proper arrangements are in place to enable it to monitor that**

conduct in order that each of the directors may fulfil ~~his~~ their responsibilities under the Code.

## Appendix 9

### APPENDIX 9

#### HEARINGS COMMITTEE

#### RULES OF PROCEDURE

...

#### 1 CONVENING THE HEARINGS COMMITTEE

...

1.5 A hearing shall be convened upon such notice as the ~~chairman~~ of the hearing decides at his or her discretion. A hearing may be convened upon short notice, where necessary, and no specific notice period is required.

1.6 Where the ~~Chairman~~ of the Hearings Committee is available, he or she shall act as ~~chairman~~ of the hearing. Where the ~~Chairman~~ of the Hearings Committee is unavailable, a Deputy ~~Chairman~~ shall act as ~~chairman~~ of the hearing. Where none of the ~~Chairman~~ or any Deputy ~~Chairman~~ is available, the ~~Chairman~~ (or, failing that, the other members of the Hearings Committee) shall appoint one of the members who is available to act as ~~chairman~~ of the hearing.

1.7 The ~~chairman~~ of the hearing shall appoint a third party, usually a partner in a law firm, to act as secretary to the hearing (the "Secretary"). The Secretary shall act as an officer of the Panel and shall perform such functions as the ~~chairman~~ of the hearing may direct. The Secretary must not have participated in any way in the matter at issue in the hearing and must be free from conflict of interest. Communications between the Hearings Committee and the parties shall usually be conducted through the Secretary. The Secretary will usually request one main contact person for each party (who may be an adviser) with whom the Secretary can communicate on that party's and its advisers' behalf.

1.8 The Hearings Committee may sit at such times and in such places as either it or the ~~chairman~~ of the hearing deems most convenient and appropriate in the circumstances.

1.9 The ~~chairman~~ of a hearing on a preliminary or procedural matter may be a different person from the person who subsequently acts as ~~chairman~~ of the hearing in relation to the main proceedings or in relation to a hearing on another preliminary or procedural matter.

#### 2 PRELIMINARY MATTERS

2.1 The ~~chairman~~ of a hearing or prospective hearing may, without convening the Hearings Committee, reject a request that the Hearings Committee be convened on any matter if he or she considers:

...

- 2.2 In such cases, the chairman of the hearing may determine the application or request without an oral hearing.

### **3 PROCEDURAL DIRECTIONS**

- 3.1 The Hearings Committee or the chairman of the hearing may give such procedural directions as either it or he or she considers appropriate for the fair and just conduct and determination of the case, including the extension or shortening of any specified time limits and the alteration or variation of the rules set out in sections 3 to 6 of these Rules of Procedure.
- 3.2 A party may apply, at any time during the proceedings, to the chairman of the hearing for procedural directions. The chairman of a hearing may deal with such applications without convening the Hearings Committee. In such cases, the chairman of the hearing may determine the application or request without an oral hearing.
- 3.3 Hearings shall be held in private, unless the chairman of the hearing, at his or her discretion, directs otherwise. Any party may request that the hearing be held in public and such a request shall be considered and ruled upon by the chairman of the hearing (or, at the discretion of the chairman of the hearing, by the Hearings Committee itself). In the event of a public hearing, the Hearings Committee or the chairman of the hearing may direct that the Hearings Committee shall hear part or parts of the hearing in private.
- 3.4 The Hearings Committee or the chairman of the hearing may, upon the application of any party, and if satisfied that it is appropriate in the circumstances, direct that certain confidential or commercially sensitive evidence be heard in the absence of one or more of the parties to the hearing.
- 3.5 The Hearings Committee or the chairman of the hearing may impose such conditions in relation to the hearing as it or he or she considers necessary and appropriate (including in relation to the non-disclosure of information relating to the hearing).
- 3.6 Without prejudice to the generality of paragraph 3.1 above, the chairman of the hearing may direct any party to a hearing, at a time and place and in a manner as directed, to:

...

### **4 CONFLICTS OF INTEREST**

- 4.1 Members of the Hearings Committee proposing to attend a hearing must raise with the chairman of the hearing any issues concerning possible conflicts of interest prior to the start of the hearing.
- 4.2 A party must raise with the chairman of the hearing any issues concerning possible conflicts of interest in relation to members of the Hearings Committee proposing to attend a hearing and any other objections in relation to the composition of the Hearings Committee for any hearing or the conduct of the hearing. Any such issues or objections must be raised at the earliest opportunity and shall be considered and ruled upon by the chairman of the hearing.

## **5 CONDUCT OF HEARINGS**

...

5.5 Save as otherwise provided in these Rules of Procedure, or as otherwise directed by the Hearings Committee or the chairman of the hearing, all parties will be entitled to be present throughout the hearing and to see all papers submitted to the Hearings Committee.

...

5.7 Any party may, subject to the consent of the chairman of the hearing, call witnesses at the hearing. If any party wishes to call a witness, it must inform the chairman of the hearing in advance and, if so directed by the chairman of the hearing, must produce an appropriate witness statement.

5.8 Failure by a party to attend a hearing or be represented at a hearing shall not prevent the Hearings Committee or the chairman of the hearing proceeding in the absence of that party. In particular, in disciplinary proceedings, the Hearings Committee may draw such inferences as it deems proper from any failure by a respondent to attend any hearing or from any choice by a respondent to remain silent at the hearing.

...

5.10 A transcript of the hearing will be made. Any party to the hearing may request a copy of the transcript, and such a request shall be considered and ruled upon by the chairman of the hearing who may impose conditions as to its confidentiality and use.

## **6 RULINGS OF THE HEARINGS COMMITTEE**

6.1 Deliberations of the Hearings Committee shall be conducted in the absence of the parties. Rulings of the Hearings Committee shall be by majority vote with each member having one vote; where necessary, the chairman of the hearing shall have a casting vote. The chairman of the hearing shall sign the ruling of the Hearings Committee.

...

6.5 The Hearings Committee will usually publish its ruling and reasons by means of a Panel Statement on the Panel's website. The chairman of the hearing may, upon application by any party or at his or her own discretion, redact matters from the Panel Statement in order to protect confidential or commercially sensitive information.

...

6.8 The Hearings Committee or the chairman of the hearing may suspend publication of any Panel Statement if there is, or may be, an appeal to the Board against a ruling of the Hearings Committee, in which circumstances an interim announcement may be made where necessary and/or appropriate. If there is an appeal, publication may, at the discretion of the chairman of the hearing, be suspended until after the decision of the Board or withheld altogether.

## **7 RIGHT OF APPEAL**

- 7.1 Any party to a hearing or prospective hearing (or any person denied permission to be a party to a hearing) (an "Appellant") may appeal to the Board against any ruling of the Hearings Committee or of the chairman of the hearing (including in respect of preliminary matters and procedural directions) by lodging a Notice of Appeal as prescribed in paragraph 1.2 of the Rules of the Board.
- 7.2 The Hearings Committee or the chairman of the hearing may stipulate a reasonable time within which a Notice of Appeal must be lodged by the Appellant with the Board and simultaneously notified to the other parties to the hearing. If no such stipulation is made, a Notice of Appeal must be lodged with the Board by the Appellant and simultaneously notified to the other parties to the hearing in accordance with the Rules of the Board.
- 7.3 Any ruling of the Hearings Committee shall stand pending determination of any appeal, unless otherwise directed by the Hearings Committee, by the chairman of the hearing or, additionally, where a Notice of Appeal has been lodged or purported to be lodged, by the Board.