PCP 2011/1 Issued on 21 March 2011

THE TAKEOVER PANEL

CONSULTATION PAPER ISSUED BY THE CODE COMMITTEE OF THE PANEL

REVIEW OF CERTAIN ASPECTS OF THE REGULATION OF TAKEOVER BIDS

PROPOSED AMENDMENTS TO THE TAKEOVER CODE

The Code Committee of the Takeover Panel (the "**Panel**") invites comments on this Public Consultation Paper. Comments should reach the Code Committee by Friday, 27 May 2011.

Comments may be sent by e-mail to:
supportgroup@thetakeoverpanel.org.uk

Alternatively, please send comments in writing to:

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All responses to formal consultation will be made available for public inspection and published on the Panel's website at www.thetakeoverpanel.org.uk, unless the respondent explicitly requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure. Personal information, such as telephone numbers or e-mail addresses, will not be edited from responses.

Unless the context otherwise requires, words and expressions defined in the Takeover Code have the same meanings when used in this Public Consultation Paper.

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1. Introduction and summary

(a) Background

1.1 On 21 October 2010, the Code Committee of the Takeover Panel (the "**Code Committee**") published a Statement ("**Statement 2010/22**") setting out its response to a public consultation paper ("**PCP 2010/2**"), published on 1 June 2010, which had sought views on various suggestions for possible amendments to the Takeover Code (the "**Code**"). In Statement 2010/22, the Code Committee stated that it had concluded that:

(a) "hostile" offerors (i.e. offerors whose offers are not from the outset recommended by the board of the offeree company) have, in recent times, been able to obtain a tactical advantage over the offeree company to the detriment of the offeree company and its shareholders, and that it intended to bring forward proposals to amend the Code with a view to reducing this tactical advantage and redressing the balance in favour of the offeree company; and

(b) a number of changes should be proposed to the Code to improve the offer process and to take more account of the position of persons who are affected by takeovers in addition to offeree company shareholders.

1.2 The Code Committee concluded that amendments to the Code should be proposed in order to:

(a) increase the protection for offeree companies against protracted "virtual bid" periods by requiring potential offerors to clarify their position within a short period of time;

(b) strengthen the position of the offeree company by:

(i) prohibiting deal protection measures and inducement fees other than in certain limited cases; and

(ii) clarifying that offeree company boards are not limited in the factors that they may take into account in giving their opinion and recommendation on an offer;

(c) increase transparency and improve the quality of disclosure by:

(i) requiring the disclosure of offer-related fees; and

(ii) requiring the disclosure of the same financial information in relation to an offeror and the financing of an offer irrespective of the nature of the offer; and

(d) provide greater recognition of the interests of offeree company employees by:

(i) improving the quality of disclosure by offerors and offeree companies in relation to the offeror's intentions regarding the offeree company and its employees; and

(ii) improving the ability of employee representatives to make their views known.

1.3 This Public Consultation Paper ("**PCP**") sets out the amendments to the Code that the Code Committee proposes to make in order to implement the conclusions described in Statement 2010/22.

(b) Invitation to comment

1.4 The Code Committee invites comments on the amendments to the Code proposed in this PCP. The full text of the proposed amendments to the Code that are put for consultation is set out in Appendix A to this PCP.

1.5 For ease of reference, a list of the questions that are put for consultation is set out in Appendix B to this PCP.

1.6 Comments should reach the Code Committee by Friday, 27 May 2011 and should be sent in the manner set out at the beginning of this PCP.

(c) Next steps

1.7 In accordance with its procedures for amending the Code, once the Code Committee has completed its consideration of the responses to the consultation, it will publish a Response Statement, which will include the final text of the amendments to the Code. In addition to the amendments set out in Appendix A, consequential and other minor amendments will be required to be made to various provisions of the Code. These will be set out in the Response Statement.

1.8 The Code Committee considers that there should be a period time, of not less than one month, between the publication date of the Response Statement and the implementation of any amendments to the Code. However, since the proposed amendments should not require the introduction of major systems changes, the Code Committee does not believe that it will be necessary for there to be a lengthy transitional or implementation period. The Code Committee intends to provide guidance as to the publication date of the Response Statement, the implementation date for any Code amendments and the likely transitional arrangements following its initial consideration of the consultation responses.

A: INCREASING THE PROTECTION FOR OFFEREE COMPANIES AGAINST PROTRACTED "VIRTUAL BID" PERIODS

2. Requiring potential offerors to clarify their position within a short period of time

(a) Introduction

2.1 In Statement 2010/22, the Code Committee concluded that offeree companies should be afforded additional protections against protracted "virtual bid" periods (i.e. where a potential offeror announces that it is considering making an offer but without committing itself to doing so) and that this should be achieved by means of the introduction of amendments to the Code to require that:

(a) following an approach to the board of the offeree company, the potential offeror is named in the announcement which commences an offer period regardless of which party publishes the announcement; and

(b) any publicly named potential offeror must, within a fixed period of four weeks following the date on which the potential offeror is publicly named:

(i) announce a firm intention to make an offer under Rule 2.5;

(ii) announce that it will not make an offer, whereupon it will then be subject to the restrictions referred to in Rule 2.8; or

(iii) make an application jointly with the offeree company for an extension of the deadline and explain the expected timetable to the announcement of a firm intention to make an offer under Rule 2.5, following which an announcement would normally be required to

be published updating the market on the status of the discussions and the revised deadline.

2.2 The Code Committee believes that such amendments would reduce the tactical advantage that "hostile" offerors have, in recent times, been able to obtain over offeree companies, to the detriment of the offeree company and its shareholders, and redress the balance in favour of the offeree company, in that:

(a) offeree companies would be subject to a shorter period of uncertainty and disruption prior to a formal offer being announced and would have a greater degree of control than at present over the duration of that period;

(b) the requirement for the board of an offeree company to make a potentially difficult and contentious decision as to whether to identify a potential offeror, and/or to request the Panel to impose a so-called "put up or shut up" deadline, would be removed; and

(c) on the basis that the commencement of an offer period would result in the imposition of a four week deadline by which the offeror must, in the absence of the offeree company requesting an extension of the deadline, announce a firm offer under Rule 2.5, an offeror would have a strong incentive to avoid a leak of its potential interest in making an offer and, as a result, offers would be more likely to be conducted either through confidential discussions with the board of the offeree company, leading to the announcement of a recommended offer, or through the announcement of a formal "hostile" offer conducted in accordance with the established Code timetable.

(b) Requirement for a potential offeror to be identified

(i) Introduction

2.3 At present, Rule 2.4(a) provides as follows:

> "**2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER**
>
> **(a) Except in the case of a mandatory offer under Rule 9, until a firm intention to make an offer has been notified, a brief announcement that talks are taking place (there is no requirement to name the potential offeror in such an announcement) or that a potential offeror is considering making an offer will normally satisfy the obligations under this Rule. Except with the consent of the Panel, such an announcement should also include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).**".

2.4 As indicated above, the Code Committee has concluded that where an announcement by an offeree company commences an offer period, that announcement should be required to identify any potential offeror with whom the offeree company is in talks or from whom it has received an approach (which has not been unequivocally rejected) with regard to a possible offer. The Code Committee believes that such a requirement should be introduced for the following reasons:

(a) the identity of the potential offeror may be important information for offeree company shareholders and other market participants and would be likely to assist them in reaching a view as to the likelihood of the potential offeror's proceeding to announce a firm offer for the offeree company;

(b) it would assist in reducing the tactical advantage that offerors have been able to obtain over offeree companies and in redressing the balance in favour of the offeree company. The premature announcement of a possible offer following a leak, and the resulting commencement of an offer period, may lead to unwelcome disruption for the offeree company but, in the absence of a requirement for the potential offeror to be identified, may have few consequences for the potential offeror. The

Code Committee considers that the knowledge that an offeror will be identified upon the commencement of an offer period should act as an incentive for a potential offeror to ensure that the secrecy of its possible offer is maintained and that appropriate steps are taken to minimise the chances of a leak of information;

(c) it would assist in providing a clear framework for the operation of the four week deadline by which the potential offeror must either announce a firm intention to make an offer under Rule 2.5 or announce that it does not intend to make an offer. Whilst it would be possible to apply such a four week deadline to a potential offeror which has not been publicly identified, the Code Committee believes that it would be preferable for there to be transparency as to the identity of any potential offeror to which such a deadline applies (and to which the restrictions of Rule 2.8 will apply if the potential offeror decides not to proceed to announce a firm offer); and

(d) it would obviate the need for the board of an offeree company to make a potentially difficult and contentious decision as to whether to identify a potential offeror.

(ii) Multiple potential offerors at the start of an offer period

2.5 On occasion, an offer period may start at a time when the board of the offeree company is in talks with, or has received approaches from, more than one potential offeror. The Code Committee believes that each such potential offeror should be identified where an announcement by the offeree company starts the offer period, irrespective of whether, for example, a particular potential offeror was the subject of any rumour and speculation which gave rise to the requirement for an announcement to be made.

2.6 Whilst this might result in a potential offeror being identified and being set a "put up or shut up" deadline at an early stage in its consideration of an offer, the Code Committee considers that such a potential offeror should not be unduly prejudiced, given that it will still have four weeks by which to announce a firm intention to make an offer, or to make sufficient progress in its negotiations as to persuade the board of the offeree company to request an extension of the four week deadline.

(iii) Subsequent potential offerors

2.7 Once an offer period has started, the Code Committee does not consider that there should be an automatic requirement for the offeree company to announce the existence of a new potential offeror from whom it subsequently receives an approach, or with whom it engages in talks (or for a potential offeror which is actively considering making an offer to make an announcement).

2.8 However, where a new potential offeror is subsequently identified (accurately and specifically) in rumour and speculation, the Code Committee believes that an announcement should be required, identifying the potential offeror. Whilst the Code Committee considers that, as currently drafted, Rules 2.2(c) and (d) provide sufficient grounds for the Panel to require such an announcement to be made, the Code Committee believes that it would be helpful to put the matter beyond doubt by introducing a new Note on Rule 2.2 to this effect.

2.9 In addition, where the offeree company itself wishes to refer in an announcement to the existence of a new potential offeror (prior to the announcement by any other offeror of a firm intention to make an offer), the Code Committee believes that that announcement should be required to identify the new potential offeror whose existence is referred to.

2.10 In the light of paragraph 2.7 above, if all identified potential offerors were to announce that they had no intention to make an offer for the offeree company, an offer period would end, notwithstanding that the board of the offeree company might remain in discussions with a potential offeror whose existence had not been referred to.

2.11 Finally, the Code Committee notes that the position outlined in paragraph 2.8 above is not consistent with the practice outlined by the Panel Executive in paragraph 6.1 of Practice Statement No. 20, which states that:

> "if, after the commencement of an offer period, rumour and speculation correctly identifies a potential offeror other than the potential offeror to whom the original announcement related (or by whom it was made), the Executive will generally be less likely to require an announcement to be made naming that second potential offeror.".

2.12 The Code Committee understands that, in the event that the amendments proposed in section 2 of this PCP are adopted, the Panel Executive intends to review and reissue Practice Statement No. 20.

(iv) Announcement that first identifies a potential offeror to specify the applicable deadline

2.13 The Code Committee believes that any announcement that first identifies a potential offeror, and which therefore gives rise to the setting of a four week deadline by which the potential offeror must clarify its position, should specify the date on which that deadline will expire. The Code Committee further believes that details of all applicable deadlines, as specified in relevant announcements, should be set out in the Disclosure Table maintained on the Panel's website.

(v) Proposed amendments

2.14 In the light of the above, the Code Committee proposes:

(a) to delete the current Rule 2.4(a) and to introduce new Rules 2.4(a), (b) and (c), as follows:

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

(a) An announcement by the offeree company which commences an offer period must identify any potential offeror with whom the offeree company is in talks or from whom an approach has been received (and not unequivocally rejected).

(b) Any subsequent announcement by the offeree company which refers to the existence of a new potential offeror must identify that potential offeror, except where the announcement is made after an offeror has announced a firm intention to make an offer for the offeree company (see Rule 2.6(e)).

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

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

(ii) include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk)."; and

(b) to introduce a new Note 3 on Rule 2.2, as follows:

"*3. Rumour and speculation during an offer period*

Where, during an offer period, rumour and speculation accurately and specifically identifies a potential offeror which has not previously been identified in any announcement, the Panel will normally require an announcement to be made by the offeree company or the potential offeror (as appropriate), identifying that potential offeror.".

Q1 Do you have any comments on the proposed new Rule 2.4 and the proposed new Note 3 on Rule 2.2?

(c) Requirement for a potential offeror to "put up or shut up" or obtain a deadline extension

(i) The 28 day deadline

2.15 At present, Rule 2.4(b) provides the Panel with the ability to impose a "put up or shut up" deadline on a potential offeror at the request of the board of the offeree company, as follows:

> "**(b) At any time during an offer period following the announcement of a possible offer (provided the potential offeror has been publicly named), and before the notification of a firm intention to make an offer, the offeree company may request that the Panel impose a time limit for the potential offeror to clarify its intentions with regard to the offeree company. If a time limit for clarification is imposed by the Panel, the potential offeror must, before the expiry of the time limit, announce either a firm intention to make an offer for the offeree company in accordance with Rule 2.5 or that it does not intend to make an offer for the offeree company, in which case the announcement will be treated as a statement to which Rule 2.8 applies.**".

2.16 As indicated above, the Code Committee believes that the "put up or shut up" regime should be amended so that, within 28 days of being publicly identified, a potential offeror must:

(a) announce a firm intention to make an offer in accordance with Rule 2.5 (which would become Rule 2.7);

(b) announce that it does not intend to make an offer, in which case the announcement would be treated as a statement to which Rule 2.8 applies (i.e. the potential offeror would be restricted from making an offer for the offeree company for a period of at least six months); or

(c) together with the board of the offeree company, obtain an extension from the Panel to the 28 day deadline.

(ii) Multiple potential offerors

2.17 The Code Committee has considered whether, in circumstances where there are two or more potential offerors whose identity was first announced on different dates, the deadline applicable to the latest potential offeror to be identified should apply in respect of all of the potential offerors. However, the Code Committee is mindful that if a potential offeror was always subject to the latest deadline applicable to any other potential offeror, this would in fact automatically extend the "virtual bid" period.

2.18 On balance, therefore, the Code Committee believes that each potential offeror should be subject to its own deadline, set by reference to the date of the announcement in which it was first identified. Nevertheless, the Code Committee recognises that, in practice, the board of an offeree company may wish to request deadline extensions which would ensure that there is a common deadline for all potential offerors.

2.19 In addition, the Code Committee notes that a potential offeror whose deadline is not extended and who announces that it does not intend to make an offer (and who would therefore be subject to the restrictions in Rule 2.8) would nonetheless be at liberty to make an offer for the offeree company in the event that a third party (including another potential offeror whose existence was already known) announced a firm intention to make an offer. Accordingly, the Code Committee considers that such a potential offeror would not be materially disadvantaged by being subject to an earlier deadline than other potential offerors in circumstances where the board of the offeree company believed this to be in the company's best interests.

(iii) Proposed amendments

2.20 In the light of the above, the Code Committee proposes to delete the current Rule 2.4(b) and to introduce a new Rule 2.6(a), as follows:

> "**2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT**
>
> **(a) Subject to Rule 2.6(b), by not later than 5.00 pm on the 28th day following the date of the announcement in which it is first identified, or by not later than any extended deadline, a potential offeror must:**
>
> **(i) announce a firm intention to make an offer in accordance with Rule 2.7;**
>
> **(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; or**
>
> **(iii) together with the offeree company, obtain the Panel's consent to an extension of the deadline.**".

Q2 Do you have any comments on the proposed new Rule 2.6(a)?

(d) Alternative approach to the identification of potential offerors

2.21 Since the publication of Statement 2010/22, the Code Committee has received a number of representations that a requirement that any potential offeror whose existence is referred to should be publicly identified in all circumstances might:

(a) in some cases, significantly deter potential offerors from approaching an offeree company (or result in them withdrawing from the offer process in order to avoid being publicly identified) and thereby reduce the number of offers made for companies to which the Code applies; and

(b) where the offeree company has been approached by two or more potential offerors, result in the public identification of one or more potential offerors which may have been in no way responsible for the events which triggered the requirement for an announcement to be made.

2.22 It has been suggested that an alternative approach to the identification of potential offerors might be considered, whereby the decision as to whether the potential offeror should be publicly identified would rest with the board of the offeree company (other than in cases where the Panel required an announcement to identify the potential offeror following specific and accurate rumour and speculation).

2.23 Under such an alternative approach, if the board of the offeree company chose to identify a potential offeror, the "put up or shut up" regime would operate as described in this section 2. However, if the board of the offeree company concluded that it was in the best interests of the offeree company and its shareholders for a potential offeror not to be publicly identified, the framework for the operation of the "put up or shut up" regime would be slightly more complex. For example, the Code Committee considers that a potential offeror whose existence was referred to, but whose identity was not revealed, would nevertheless need to be required to clarify its intentions by a 28 day deadline, in the same way as any publicly identified potential offeror. This could be achieved by requiring a potential offeror who did not intend to announce a firm intention to make an offer to confirm this fact to the board of the offeree company, which would then be required to make an appropriate announcement. Following the making of such an announcement, the potential offeror would then be subject to the restrictions of Rule 2.8 for six months from the date of the offeree company's announcement, albeit that there would be no transparency as to the identity of the former potential offeror to whom the restrictions of Rule 2.8 applied.

2.24 Given the reasons for requiring the public identification of potential offerors in all cases, as set out in paragraph 2.4 above, namely that:

(a) the identity of the potential offeror is likely to be important information for offeree company shareholders and other market participants;

(b) it would assist in reducing the tactical advantage that offerors have been able to obtain over offeree companies;

(c) it would assist in providing a clear framework for the operation of the 28 day "put up or shut up" regime (including the operation of Rule 2.8); and

(d) it would obviate the need for the board of an offeree company to make a potentially difficult and contentious decision as to whether to identify a potential offeror,

and given that the chances of an offeror not being publicly identified would only be marginally less under the alternative approach, the Code Committee has concluded that the benefits of requiring the identification of potential offerors in all cases are not outweighed by the risk that offerors might be deterred from making offers for companies to which the Code applies (which risk is, in any event, very difficult for the Code Committee to quantify). The Code Committee has therefore decided, on balance, that the suggested alternative approach should not be pursued.

Q3 Do you have any comments on the possible alternative approach to the identification of potential offerors?

(e) Where another offeror has announced a firm intention to make an offer

(i) Disapplication of the 28 day deadline

2.25 The Code Committee considers that the 28 day deadline should not be applied to a potential offeror, or should cease to apply, where another offeror has previously announced, or subsequently announces, a firm intention to make an offer for the offeree company. The principal reason for this is that the purpose in introducing the 28 day deadline is to minimise the uncertainty caused by a "virtual bid" period and this concern will no longer apply if another offeror has announced a firm offer. Such a disapplication of the 28 day deadline would be consistent with the current situation under the Code, whereby the ability of the offeree company to request a "put up or shut up" deadline under Rule 2.4(b) does not apply in circumstances where an offeror has announced a firm intention to make an offer and a potential offeror subsequently makes a statement that it is considering making a competing offer.

(ii) Clarification by a publicly identified potential competing offeror

2.26 The relevant provision currently applicable to a potential offeror which makes a statement that it is considering making an offer where one or more offerors have already announced a firm offer is Note 1 on Rule 19.3. This provides, amongst other things, that:

> "… *while a potential competing offeror may make a statement that it is considering making an offer, it is not acceptable for such statements to remain unclarified for more than a limited time in the later stages of the offer period.*".

The Code Committee understands that, in the context of a contractual offer, this Note is interpreted as requiring clarification of a potential competing offeror's intentions on or around 10 days prior to the end of the 60-day offer timetable (sometimes referred to, by way of shorthand, as "Day 50", notwithstanding that the actual date may be earlier or later than the 50th day of the offer).

2.27 The Code Committee believes that it should continue to be the case that any uncertainty caused by the continued presence of a publicly identified potential competing offeror following the announcement of a firm offer should be required to be clarified, by a date to be determined by the Panel, in the later stages of the firm offeror's offer timetable. However, the Code Committee believes that it would be clearer if this requirement were to be moved from Note 1 on Rule 19.3 into the proposed new Rule 2.6. In addition, the Code Committee believes that the Code should provide that the date by which such clarification is required should be announced by the Panel.

(iii) Clarification by a potential competing offeror which has not been publicly identified

2.28 The Code Committee understands that, where the board of an offeree company for which an unwelcome firm offer has been announced makes an announcement that it is in discussions with a potential competing offeror (i.e. a "white knight"), but does not identify that potential competing offeror, the practice of the Panel Executive has been to require that announcement to be clarified during the later stages of the offer period. The Code Committee considers that such announcements by the board of the offeree company should continue to be permissible (subject to the Panel's ability to require the "white knight" to be identified in appropriate circumstances) and that the Panel Executive's practice of requiring clarification of such announcements in the later stages of the offer period should be codified.

2.29 The Code Committee therefore believes that the Code should make it clear that, where an offeror has announced a firm intention to make an offer and the offeree company has referred in any subsequent announcement to the existence of a potential competing offeror (including any potential "white knight"), the Panel will determine (and announce) a date in the later stages of the offer period by which the potential competing offeror must either:

(a) announce a firm intention to make an offer; or

(b) confirm to the offeree company that it does not intend to make an offer, in which case the offeree company will be required to announce that fact (without being required to identify the potential offeror) and the potential offeror will be subject to the restrictions referred to in Rule 2.8.

2.30 Notwithstanding that an offeree company may, in the circumstances described above, wish to make an announcement that does not publicly identify a potential competing offeror, the Code Committee believes that an offeree company should be at liberty, at any time, to identify a potential offeror, if it so wishes. The Code Committee notes that Rule 2.3 stipulates that a potential offeror must not attempt to prevent the board of an offeree company from making an announcement at any time the board thinks appropriate. The Code Committee believes that Rule 2.3 should also provide explicitly that the board of the offeree company should not be prevented from making an announcement that publicly identifies a potential offeror.

(iv) Proposed amendments

2.31 The Code Committee therefore proposes:

(a) to introduce a new Rule 2.6(b), as follows:

"**(b) Rule 2.6(a) will not apply, or will cease to apply, to a potential offeror if another offeror has already announced, or subsequently announces (prior to the relevant deadline), a firm intention to make an offer for the offeree company. In such circumstances, the potential offeror will be required to clarify its intentions in accordance with Rule 2.6(d) below;**";

(b) to delete Note 1 on Rule 19.3 and to introduce a new Rule 2.6(d), as follows (and to make consequential amendments to Section 4 of Appendix 7, as set out in Appendix A to this PCP):

"**(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, 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 also Section 4 of Appendix 7 in the case of a scheme of arrangement.";

(c) to introduce a new Rule 2.6(e), as follows:

"**(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, 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 made a statement to which Rule 2.8 applies."; and

(d) to amend the final paragraph of Rule 2.3 (which would become a new Rule 2.3(d)), as follows:

"**(d) A potential offeror must not attempt to prevent the board of an offeree company from making an announcement relating to a possible offer, or publicly identifying the potential offeror, at any time the board ~~thinks~~ considers appropriate.**".

2.32 In addition, the Code Committee proposes to make a number of minor amendments to Rules 1, 2.1, 2.2 and 2.3, as set out in Appendix A to this PCP.

Q4 Do you have any comments on the proposed new Rules 2.6(b), (d) and (e) and Rule 2.3(d)?

(f) Formal sale process

2.33 In Statement 2010/22, the Code Committee stated that it did not propose to extend the proposed amendments to the "put up or shut up" regime described in paragraph 2.1 above to a situation where the board of an offeree company has initiated a formal process to sell the company by means of a public auction.

2.34 The Code Committee therefore proposes to introduce a new Note 2 on Rule 2.6, as follows:

"*2. Formal sale process*

Where an offer period commences with an announcement by the board of the offeree company 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) and Rule 2.6(a), such that any potential offeror who agrees with the offeree company to participate in that process and in respect of whom an announcement is subsequently made 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.".

2.35 The Code Committee also proposes to introduce a new Note 3 on Rule 2.4, cross-referring to the new Note 2 on Rule 2.6, as set out in Appendix A to this PCP.

Q5 Do you have any comments on the proposed new Note 2 on Rule 2.6?

(g) Extending the 28 day deadline

(i) Extensions to be granted only at the request of the offeree company

2.36 As indicated in Statement 2010/22, the principal objectives of the amendments to the Code put forward in this PCP are to reduce the tactical advantage obtained by "hostile" offerors over offeree companies, particularly in the context of a "virtual bid", and to redress the balance in favour of the offeree company. Accordingly, the Code Committee believes that it is important that the Panel should grant an extension of a 28 day deadline set under the proposed new Rule 2.6(a) only where an extension is requested by the board of the offeree company.

(ii) Panel to take all relevant factors into account

2.37 In determining whether to grant such an extension, the Code Committee believes that the Panel should take all relevant factors into account, including:

(a) the status of negotiations between the offeree company and the potential offeror (including in relation to the offer price); and

(b) the anticipated timetable for their completion.

However, in circumstances where an extension of a deadline is requested by the board of the offeree company, the Code Committee believes that the Panel's consent to such an extension should normally be granted.

(iii) No requirement to extend the deadline of all potential offerors to the same date

2.38 The Code Committee has considered whether the regime for the granting of

extensions of "put up or shut up" deadlines should be such that, where an extension is granted in respect of one potential offeror, the same extended deadline should also apply in respect of any other potential offeror. However, the Code Committee is mindful that if a potential offeror was always subject to the latest deadline applicable to any other potential offeror, this would in fact extend "virtual bid" periods.

2.39 On balance the Code Committee therefore considers that the new "put up or shut up" regime should operate such that, where two or more potential offerors are subject to a 28 day deadline, the Panel, if so requested by the board of the offeree company, may:

(a) consent to different deadline extensions for different offerors; and/or

(b) consent to the extension of the deadline of one or more of the potential offerors but not of the other(s).

2.40 Nevertheless, the Code Committee recognises that, in practice, the board of an offeree company may wish to request deadline extensions such as to achieve a common deadline for all potential offerors.

2.41 In addition, the Code Committee notes that a potential offeror whose deadline is not extended and who announces that it does not intend to make an offer (and who would therefore be subject to the restrictions in Rule 2.8) would nonetheless be at liberty to make an offer for the offeree company in the event that a third party (including another potential offeror whose existence was already known) announced a firm intention to make an offer. Accordingly, the Code Committee considers that such a potential offeror would not be materially disadvantaged by being subject to an earlier deadline than other potential offerors in circumstances where the board of the offeree company believed this to be in the company's best interests.

(iv) Deadline extensions to be announced by the offeree company

2.42 Where the Panel consents to an extension of a deadline, the Code Committee believes that the board of the offeree company should be required to make an announcement giving details of the new deadline and of the matters referred to in the paragraph 2.37 above.

2.43 Where there are two or more potential offerors and different extended deadlines will apply in respect of different potential offerors, or if the deadline for some but not all of the potential offerors is to be extended, the Code Committee considers that the announcement by the offeree company should make this clear.

(v) Panel to give its decision shortly before expiry of a deadline

2.44 The Code Committee believes that, when a request is made to extend a deadline set under Rule 2.6(a), the Panel should normally give its decision shortly before the time at which the deadline is due to expire. This is because:

(a) the status of negotiations will almost certainly change, and negotiations may even break down, between the announcement which triggers the commencement of the 28 day period and the expiry of that period and the Panel will therefore only wish to consider an application for an extension on the basis of the status of, and process for, negotiations shortly before the expiry of the deadline; and

(b) the granting of extensions shortly after the announcement which triggers the commencement of the 28 day period would do little to reduce the tactical advantage obtained by offerors over offeree companies, whereas the knowledge that an extension will only be granted shortly before the

time at which a deadline is due to expire would assist in redressing the balance in favour of the offeree company.

(vi) Proposed amendments

2.45 The Code Committee therefore proposes to introduce a new Rule 2.6(c), and a new Note 1 on Rule 2.6, as follows:

> "**(c) The Panel will consent to an extension of a deadline set in accordance with Rule 2.6(a), or any previously extended deadline, at the request of the board of the offeree company and after taking into account all relevant factors, including:**
>
> > **(i) the status of negotiations between the offeree company and the potential offeror; and**
> >
> > **(ii) the anticipated timetable for their completion.**
>
> **Where the Panel consents to an extension of a deadline, the offeree company must promptly announce the details of the new deadline and the matters referred to in paragraphs (i) and (ii) above.**
>
> …
>
> *1. Requests for deadline extensions*
>
> *When a request to extend a deadline set under Rule 2.6(a) is made, the Panel will normally give its decision shortly before the time at which the deadline is due to expire.*".

Q6 Do you have any comments on the proposed new Rule 2.6(c) and Note 1 on Rule 2.6?

(h) Statements of intention not to make an offer

(i) Application of Rule 2.8 to statements made during an offer period

2.46 Rule 2.8 provides that a person who makes a statement that he does not intend to make an offer for a company (a "Rule 2.8 statement") will be bound by that

statement for a period of six months, unless there is a material change of circumstances or there has occurred an event which the person specified in his statement as an event that would enable it to be set aside (a so-called "carve-out"). Where a Rule 2.8 statement is made following the imposition by the Panel of a "put up or shut up" deadline, the carve-outs that are permitted to be specified by the person making the statement are limited to those described in Note 2 on Rule 2.8, as follows:

(a) the agreement or recommendation of the board of the offeree company;

(b) the announcement of an offer for the offeree company by a third party; and

(c) the announcement by the offeree company of a "whitewash" proposal or a reverse takeover.

2.47 Almost invariably, a person making a Rule 2.8 statement in response to the imposition of a "put up or shut up deadline" will include all of the permitted carve-outs in its statement. Given this, the Code Committee considers that it would be preferable to modify Rule 2.8 so as to avoid a person making a Rule 2.8 statement, whether in response to a "put up or shut up" deadline or otherwise, needing to repeat the standard carve-outs. The Code Committee believes that the events described in Note 2 on Rule 2.8 should instead be cast as being events following which the Panel will normally consent to a Rule 2.8 statement being set aside (i.e. notwithstanding that the events would not have been included as carve-outs in the Rule 2.8 statement).

2.48 The Code Committee notes that, if the new Rule 2.6 is introduced as proposed above, the Panel would normally consent to the setting aside of a Rule 2.8 statement made by a potential offeror ahead of its 28 day "put up or shut up" deadline in the event of a third party announcing a firm intention to make an offer

within the subsequent period of six months. This could include the announcement of a firm offer by another potential offeror whose existence was publicly known at the time that the potential offeror made its Rule 2.8 statement.

2.49 The Code Committee also notes that the Panel would normally consent to a Rule 2.8 statement being set aside with the agreement or recommendation of the board of the offeree company. The Code Committee believes that this should be subject to the proviso that, where the Rule 2.8 statement was made at any time after a third party had announced a firm intention to make an offer, the Panel's consent would not normally be granted on such grounds unless that firm offer had been withdrawn or had lapsed. This is because:

(a) as explained above, it is unacceptable for statements in relation to the possibility of a competing offer being announced to remain unclarified in the later stages of an offer period – and, where a Rule 2.8 statement is made in response to the Panel setting a deadline by which such clarification is required, that deadline could easily be circumvented if the statement could be set aside with the agreement of the board of the offeree company. Therefore, in the opinion of the Code Committee, the agreement or recommendation of the board of the offeree company should not, of itself, be sufficient for a Rule 2.8 statement to be set aside after the passing of a deadline set by the Panel in the later stages of an offer period by which statements in relation to the possibility of a competing offer must be clarified; and

(b) the Code Committee considers that, where a person makes a Rule 2.8 statement voluntarily ahead of the Panel setting such a deadline, the same position should apply.

(ii) Application of Rule 2.8 to statements made outside an offer period

2.50 At present, a person who makes a Rule 2.8 statement "voluntarily", i.e. in circumstances where a "put up or shut up" deadline has not been imposed by the Panel, may include bespoke carve-outs in its statement, in addition to those described in Note 2 on Rule 2.8, subject to its having consulted the Panel in advance in accordance with Note 1 on Rule 2.8. The Code Committee believes that the Code should continue to permit a person who makes a voluntary Rule 2.8 statement to include bespoke carve-outs, but only in circumstances where the Rule 2.8 statement is made outside an offer period.

(iii) Proposed amendments

2.51 The Code Committee therefore proposes to amend Rule 2.8, and Note 2 on Rule 2.8, as follows:

> "**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 with the consent of the Panel, ~~unless there is a material change of circumstances or there has occurred an event which the person specified in his statement as an event which would enable it to be set aside,~~ neither the person making the statement, nor any person who acted in concert with <u>that person</u> ~~him~~, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:**
>
> **(a) announce an offer or possible offer for the offeree company** …
>
> …
>
> *NOTES ON RULE 2.8*
>
> …

2. When consent may be given~~Rules 2.4(b) and 12.2(b)~~

The Panel will normally only give its consent under this Rule if:~~Where a statement to which Rule 2.8 applies is made following a time limit being imposed under Rule 2.4(b) or pursuant to Rule 12.2(b)(ii)(A), the only matters that a person will normally be permitted to specify in the statement as matters which would enable it to be set aside are:~~

(a) ~~the agreement or recommendation of~~ the board of the offeree company agrees to the statement being set aside. Where the statement was made at any time following the announcement by a third party of a firm intention to make an offer, such consent will not normally be given unless that offer has been withdrawn or has lapsed;

(b) ~~the announcement of an offer by~~ a third party announces a firm intention to make an offer for the offeree company; ~~and~~

(c) ~~the announcement by~~ the offeree company ~~of~~ announces a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or ~~of~~ a reverse takeover (see Note 2 on Rule 3.2)~~.~~;

(d) there has been any other 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 which would enable the statement to be set aside (see Note 1).".

2.52 The Code Committee also proposes to make minor amendments to Notes 3 and 4 on Rule 2.8, as set out in Appendix A to this PCP.

2.53 In addition, the Code Committee proposes to make equivalent amendments to the Note on Rules 35.1 and 35.2, which describes the circumstances in which the Panel will normally consent to a dispensation from the restrictions imposed on an unsuccessful offeror, as set out in Appendix A to this PCP.

Q7 Do you have any comments on the proposed amendments to Rule 2.8 and to the Note on Rules 35.1 and 35.2?

(i) Position under Rule 2.2 where a potential offeror ceases considering the possibility of making an offer

(i) Introduction

2.54 Rules 2.2(c) and (d) provide that an announcement is required where there might have been a leak of information in relation to a possible offer, as follows:

> "**An announcement is required:—**
>
> …
>
> **(c) when, following an approach to the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price; [or]**
>
> **(d) when, before an approach has been made, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation**".

2.55 As explained by the Panel Executive in Practice Statement No. 20, there is no requirement under Rule 2.2(c) or Rule 2.2(d) for an announcement to be made confirming that there is no truth to rumour and speculation that an offer might be made for a company.

2.56 However, circumstances may occur where:

(a) the board of an offeree company is in receipt of an approach from a potential offeror or, alternatively, a potential offeror has yet to approach the potential offeree company but is actively considering a possible offer;

(b) there is rumour and speculation to this effect and/or an untoward movement in the potential offeree company's share price, such that an

announcement would normally be required to be made under Rule 2.2(c) or (d); and

(c) as a result of the rumour and speculation and/or the untoward movement in the share price of the potential offeree company, the potential offeror decides to withdraw its approach and/or to cease considering the possibility of making an offer.

2.57 The Code Committee understands that, as explained in Practice Statement No. 20, the Panel Executive should be consulted in such circumstances. This is to enable the Panel Executive to determine whether it should require an announcement to be made in order to prevent the creation of a false market, clarifying that, although at the time of the rumour and speculation the company was in receipt of an approach, and/or the potential offeror was actively considering a possible offer for the company, this was no longer the case. If a potential offeror was identified in such an announcement, it would then normally be subject to the restrictions set out in Rule 2.8 for a period of six months following the date of that announcement.

2.58 The Code Committee further understands that the Panel Executive might grant a dispensation from the requirement to make an announcement under Rule 2.2(c) or (d), provided that the potential offeror confirms to the Panel that:

(a) it has ceased actively to consider making an offer for the offeree company (and has therefore ceased carrying out any work in relation to such an offer); and

(b) it would not actively consider making an offer for the offeree company for an appropriate period of time (which the Code Committee understands is normally a period of not less than three months).

In such circumstances, the potential offeree company would be saved from being subject to the unwelcome, and arguably unnecessary, disruption which might arise were an announcement to be made of the former potential offeror's interest. In the light of this, the Code Committee considers the Panel Executive's practice in this area to be sensible and proportionate.

(ii) The Code Committee's conclusions

2.59 The Code Committee notes that, if the new Rule 2.6(a) is introduced as proposed, there might be an increased number of cases where the Panel Executive is consulted by a potential offeror in the circumstances described in paragraph 2.56 above. In the light of this, and with a view to providing greater clarity in this area, the Code Committee believes that, subject to the points made in paragraphs 2.60 and 2.61 below, the Panel Executive's practice of granting a dispensation from the requirement to make an announcement under Rule 2.2(c) or (d) in the circumstances described above should be codified. However, the Code Committee believes that the Panel must continue to have the ability to require an announcement to be made in cases where, notwithstanding that the potential offeror has ceased actively to consider the possibility of making an offer, the rumour and speculation continues or is repeated, or where this is otherwise necessary to prevent the creation of a false market.

2.60 The Code Committee also believes that, in cases where the Panel is willing to grant a dispensation, it would be insufficient for the restriction on the offeror actively considering making an offer for the offeree company to apply for a period of only three months. This is because, if this were the case, a potential offeror would, in effect, be able to choose between:

(a) making an announcement that would trigger the commencement of a 28 day deadline by which it must announce either a firm intention to make an

offer or that it does not intend to make an offer (with the restrictions of Rule 2.8 then applying for six months thereafter); and

(b) seeking a dispensation from the requirement to make such an announcement which, if granted, would result in its being restricted from actively considering making an offer for a period of only three months.

Faced with this choice, the Code Committee considers that potential offerors would be likely to prefer the latter course. The Code Committee therefore believes that the restrictions that should apply to a potential offeror which has ceased actively to consider making an offer for an offeree company in the circumstances described above should apply for the same period of time as the restrictions that apply to a potential offeror which has made a statement to which Rule 2.8 applies and that, in both cases, the restrictions should apply for a period of six months.

2.61 The Code Committee believes that, in the event of the Panel granting a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or (d) as described above, the Panel should be able to consent to these restrictions being set aside in the circumstances set out in paragraphs (b) to (d) of the proposed new Note 2 on Rule 2.8. In addition, the Code Committee believes that the Panel should have the ability, at the request of the offeree company, to permit the potential offeror to recommence active consideration of an offer provided that at least three months have expired since the dispensation was granted. The Code Committee considers that this would be consistent with the period of time applicable under anti-avoidance provisions elsewhere in the Code (i.e. Note 6 on Rule 2.4 and paragraph (a)(i) of the Note on Rules 35.1 and 35.2). However, the Code Committee considers that there may be exceptions to this, for example, the Code Committee considers that the Panel might also give its consent to the potential offeror recommencing active consideration of an offer for the

offeree company where a new offer period has commenced following the announcement of a possible offer by a third party.

(iii) Proposed new Note 4 on Rule 2.2

2.62 The Code Committee therefore proposes to introduce a new Note 4 on Rule 2.2, as follows:

> "*4. When a dispensation may be granted*
>
> *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 such a dispensation has been granted, the potential offeror may not actively consider making an offer for the offeree company for a period of six months and will be treated as having made a statement to which Rule 2.8 applies. The Panel may consent to this restriction being set aside 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, permit the potential offeror to recommence active consideration of an offer provided that at least three months have expired since the dispensation was granted.*
>
> *Where the potential offeror has ceased actively to consider making an offer, the Panel may nonetheless require an announcement to be made where:*
>
> *(a) any rumour and speculation continues or is repeated; and/or*
>
> *(b) it considers that this is otherwise necessary in order to prevent the creation of a false market.*".

(iv) An alternative approach considered by the Code Committee

2.63 In reviewing this area, the Code Committee gave careful consideration to whether the Code should require that, in all cases in which an announcement obligation under Rule 2.2(c) or (d) was triggered, an announcement should be required, notwithstanding that the potential offeror had subsequently ceased actively to consider making an offer.

2.64 On balance, the Code Committee concluded that a strict approach of this kind should not be adopted in all cases where an announcement obligation under Rule 2.2(c) or (d) had been triggered because:

(a) it would be contrary to the Code Committee's objective of increasing the protection for offeree companies against "virtual bid" periods since an announcement of the fact that a potential offeror had been considering making an offer would be likely to cause disruption for the potential offeree company;

(b) the purpose of Rules 2.2(c) and (d) is to require an announcement to be made where there might have been a leak of a possible offer. If a potential offeror has confirmed that it has ceased actively to consider making an offer, and that it will not actively consider making an offer for a further period of six months, there is a strong argument that there is no longer any need for an announcement to be made (albeit that the requirement was triggered at the time that the rumour and speculation or untoward price movement occurred);

(c) the Panel Executive has successfully applied the practices described above for a number of years; and

(d) a strict approach might be likely to deter some potential offerors from ever starting to consider a possible offer. This could be to the general detriment of shareholders in companies that are subject to the Code.

Q8 Do you have any comments on the proposed framework to be applied in circumstances where, following a requirement to make an offer being triggered under Rule 2.2(c) or (d), a potential offeror ceases actively to consider making an offer, or on the proposed new Note 4 on Rule 2.2?

(j) Other matters

(i) New structure for Rule 2

2.65 As a result of the introduction of certain of the amendments proposed above, it will be necessary for certain of the provisions of the current Rule 2 to be moved and/or renumbered, as set out in the following table of destinations:

Current provision	**New provision**
Rule 2.1	Rule 2.1(a)
Note 1 on Rule 2.1	Rule 2.1(b)
Note 2 on Rule 2.1	Deleted
Rule 2.2	Rule 2.2
Notes 1 and 2 on Rule 2.2	Notes 1 and 2 on Rule 2.2
Rule 2.3	Rule 2.3
Rule 2.4(a)	• First sentence replaced by new Rules 2.4(a) and (b) • Second sentence becomes Rule 2.4(c)(ii)
Rule 2.4(b)	Replaced by Rule 2.6
Rule 2.4(c)	Rule 2.5(a)
Rule 2.4(d)	Rule 2.5(b)
Note 1 on Rule 2.4	Rule 2.5(c)
Note 2 on Rule 2.4	Replaced by Rule 2.6(b)
Note 3 on Rule 2.4	Replaced by Rule 2.6(a)
Note 4 on Rule 2.4	Replaced by Rules 2.6(a)(iii) and (c)
Note 5 on Rule 2.4	Note 1 on Rule 2.5
Note 6 on Rule 2.4	Note 2 on Rule 2.5
Note 7 on Rule 2.4	Note 3 on Rule 2.5
Note 8 on Rule 2.4	Note 1 on Rule 2.4
Note 9 on Rule 2.4	Note 2 on Rule 2.4
Rule 2.5(a)	Rule 2.7(a)
Rule 2.5(b)	Rule 2.7(c)
Rule 2.5(c)	Rule 2.7(d)
Note 1 on Rule 2.5	Note 1 on Rule 2.7
Notes 2, 4 and 5 on Rule 2.5	Note 2 on Rule 2.7
Note 3 on Rule 2.5	Deleted

Current provision	New provision
Rule 2.6 and the Notes on Rule 2.6	Rule 2.12 and the Notes on Rule 2.12
Rule 2.7 and the Note on Rule 2.7	Rule 2.7(b)
Rule 2.8 and the Notes on Rule 2.8	Rule 2.8 and the Notes on Rule 2.8
Rule 2.9 and the Notes on Rule 2.9	Rule 2.9 and the Notes on Rule 2.9
Rule 2.10 and the Notes on Rule 2.10	Rule 2.10 and the Notes on Rule 2.10
Rule 2.11 and the Notes on Rule 2.11	Rule 2.11 and the Notes on Rule 2.11

(ii) Minor and consequential amendments

2.66 In addition to the amendments described above, the Code Committee proposes to make a number of minor and consequential amendments to Rule 2, the Note on Rule 7.1, Note 12(a) on Rule 8, Note 3 on Rule 31.5 and Note 3 on Rule 32.2, as set out in Appendix A to this PCP.

2.67 In addition, the Code Committee proposes to add a new final paragraph to what will become Note 1 on Rule 2.5 so as to make clear the fact that an offeror is not permitted to exercise a right it has reserved to set aside a statement in relation to the level of consideration to be offered, or in relation to varying the form and/or mix of the consideration, after the offeror has announced a firm intention to make an offer for the offeree company, as set out in Appendix A to this PCP.

2.68 Various provisions of the Code will also need to be renumbered and cross-references amended.

(iii) Practice Statement No. 20

2.69 As indicated above, the Panel Executive has informed the Code Committee that, if the amendments to the Code proposed in this section 2 are adopted, it is likely to reissue a revised Practice Statement No. 20, which relates to the Panel Executive's interpretation and application of Rules 2.1 to 2.4(a).

B: STRENGTHENING THE POSITION OF THE OFFEREE COMPANY

3. Prohibiting deal protection measures and inducement fees, other than in certain limited cases

(a) Introduction

3.1 In Statement 2010/22, the Code Committee concluded that, in order to reduce the tactical advantage which offerors have obtained over the offeree company in recent years, and to redress the balance in favour of the offeree company, amendments to the Code should be proposed with the objective of strengthening the position of the offeree company, including by the introduction of a general prohibition on deal protection measures and inducement fees, other than in certain limited cases. The Code Committee noted that it has now become standard market practice in the context of recommended offers for offerors to have the benefit of a number of deal protection measures, including an inducement fee at the maximum permissible level, and that such measures are often presented to offeree company boards by offerors and their advisers as standard "packages" which the offeree company board is under considerable pressure to accept, with little, if any, room for negotiation. This can even occur following a hostile "virtual bid" period, at the end of which the potential offeror and the board of the offeree company reach agreement on the terms of a recommended offer.

3.2 The Code Committee noted in Statement 2010/22 that it shares the concerns of many respondents to PCP 2010/2 that such packages of contractual protections have detrimental effects for offeree company shareholders in that they might:

(a) deter competing offerors from making an offer, thereby denying offeree company shareholders the possibility of deciding on the merits of a competing offer; and/or

(b) lead to competing offerors making an offer on less favourable terms than they would otherwise have done.

Accordingly, the Code Committee concluded that the Code should be amended by introducing a general prohibition (save in certain limited circumstances) on deal protection measures and inducement fees.

3.3 However, the Code Committee recognised that an offeror might legitimately request certain specific undertakings from the offeree company board, for example in relation to:

(a) the confidentiality of information provided to the offeree company during the course of the offer;

(b) the non-solicitation of an offeror's employees or customers; and

(c) the provision of information that is required in order to satisfy the conditions to the offer or obtain regulatory approvals.

3.4 Nevertheless, the Code Committee considered that allowing offerors to obtain any further undertakings from the offeree company board would run the risk that market practice would, through incremental extension, return to where it is today.

(b) General prohibition on offer-related arrangements

(i) Inducement fees, deal protection measures and other offer-related arrangements

3.5 The Code Committee believes that the proposed general prohibition on deal protection measures and inducement fees should extend to any "offer-related arrangement", which would include any agreement, arrangement or commitment proposed to be entered into between the offeree company and an offeror (and/or

persons acting in concert with them) in connection with an offer, either during the offer period or when an offer is reasonably in contemplation.

3.6 The proposed general prohibition, formulated in this way, is intended to prohibit:

(a) any deal protection measure of the kind identified in PCP 2010/2;

(b) any inducement fee arrangement, including any arrangement which has a similar financial or economic effect to an inducement fee, even if any such arrangement does not actually involve any cash payment and no matter how it is structured;

(c) any implementation agreement of the kind currently entered into between an offeror and the offeree company prior to the announcement of a firm intention to make an offer;

(d) any agreement of the kind currently entered into between an offeror and the offeree company at an earlier stage in the offer process, but when an offer is nonetheless in contemplation, such as an exclusivity agreement or a so-called "work-fee" arrangement (a form of inducement fee arrangement); and

(e) any commitment given by an offeree company to a potential offeror not to identify the offeror in any announcement made by the offeree company under Rule 2, as it is proposed to be amended in section 2 of this PCP, or to seek an extension of a "put up or shut up" deadline, as described in section 2 of this PCP.

3.7 In addition, the Code Committee believes that the proposed general prohibition should also prohibit other agreements or arrangements which the offeror and the offeree company propose to enter into in connection with an offer, such as

arrangements entered into as part of the offer discussions under which the offeree company proposes to sell certain assets to an offeror, or to enter into a licence with an offeror, or under which an offeror proposes to extend financing to the offeree company. The reason that the Code Committee believes that the proposed general prohibition should prohibit such agreements or arrangements is that, when such agreements or arrangements are proposed to be entered into in connection with an offer, they might be intended to have, or might otherwise have, the same detrimental effects for offeree company shareholders as the packages of contractual protections identified by the Code Committee and referred to above. In particular, they might:

(a) deter competing offerors from making an offer, thereby denying offeree company shareholders the possibility of deciding on the merits of a competing offer; and/or

(b) lead to competing offerors making an offer on less favourable terms than they would otherwise have done.

3.8 The Code Committee does not intend that the proposed general prohibition should apply to agreements or arrangements which the offeror and the offeree company propose to enter into in the ordinary course of their respective businesses. The Code Committee considers that, where an offeror and the offeree company are able to satisfy the Panel that the proposed agreement or arrangement would have been entered into, on the same terms, even in the absence of the offer (or possible offer), such agreements or arrangements should not be treated as having been proposed to be entered into in connection with an offer. In establishing whether this is the case, the Code Committee considers that the Panel should have regard, amongst other things, to whether or not the proposed agreement or arrangement is consistent with other agreements or arrangements previously entered into between the parties as part of a pre-existing and ongoing trading relationship.

3.9 In the light of the above, the Code Committee considers that there should be a requirement to consult the Panel at the earliest opportunity if there is any doubt as to whether any agreement or arrangement proposed to be entered into between an offeror (or potential offeror) and the offeree company should be treated as an "offer-related arrangement".

(ii) Matters excluded from the scope of the prohibition

3.10 The Code Committee recognises that it is legitimate for offerors and offeree companies to continue to request certain specific commitments from the other party in connection with an offer. In addition, since the Code Committee's concerns in this area relate to the potentially detrimental effects for offeree company shareholders of commitments given by the offeree company to an offeror, the Code Committee believes that agreements or arrangements which impose obligations only on an offeror, or a person acting in concert with it, should also be permitted.

3.11 The Code Committee therefore believes that the following matters should be excluded from the scope of the definition of an "offer-related arrangement":

(a) a commitment to maintain the confidentiality of information. While recognising the commercial need for confidentiality agreements, the Code Committee intends to prohibit parties from including in such agreements other provisions which are themselves otherwise prohibited under the Code, for example under the proposed new Rule 21.2(a) itself or under Rule 2.3 (as proposed to be amended in section 2 of this PCP). In particular, the Code Committee notes that, under Rule 2.3(d) (as proposed to be amended in section 2 of this PCP), a potential offeror must not attempt to prevent the board of an offeree company from making an announcement relating to a possible offer, or from publicly identifying the potential offeror, at any time the board considers appropriate;

(b) a commitment not to solicit employees, customers or suppliers;

(c) a commitment to provide information or assistance for the purposes of obtaining any official authorisation or regulatory clearance;

(d) irrevocable commitments and letters of intent given by directors of the offeree company acting in their personal capacity as shareholders in the offeree company or by other shareholders who are, or who are presumed to be, acting in concert with the offeree company; and

(e) any agreement or arrangement which imposes obligations only on the offeror or a person acting in concert with the offeror, for example, a "reverse break fee" or a standstill agreement.

3.12 The Code Committee notes that when directors of an offeree company, acting in their personal capacity as shareholders in the offeree company, are asked to give irrevocable commitments or letters of intent to accept (or not to accept) an offer, or to give other commitments to an offeror (or persons acting in concert with it), this could give rise to a conflict of interest between their personal interests and the interests of the company as a whole. For example, a director of the offeree company with a significant shareholding in the offeree company might be asked by an offeror to consider entering into an exclusivity arrangement or an inducement fee arrangement involving a fee payable upon a withdrawal of that director's recommendation of that offeror's offer. Therefore, the Code Committee believes that directors of the offeree company, before they enter into any commitment with an offeror (or anyone else), whether in their capacity as shareholders in the offeree company or otherwise, should consider carefully whether the commitment might give rise to a conflict of interest and restrict their freedom to advise offeree company shareholders in the future.

3.13 The Code Committee believes that the parties to an offer should be permitted to make use of the exceptions to the general prohibition referred to in paragraph 3.11(a) to (e) above in combination with each other but does not believe that it is necessary for the Code to state this expressly.

(iii) Proposed amendments

3.14 In the light of the above, the Code Committee proposes to delete the current Rule 21.2, and the Notes thereon, and to introduce a new Rule 21.2, as follows:

> "**21.2 INDUCEMENT FEES AND OTHER OFFER-RELATED ARRANGEMENTS**
>
> **(a) Except with the consent of the Panel, neither the offeree company nor any person acting in concert with it may enter into any offer-related arrangement with either the offeror or any person acting in concert with it during an offer period or when an offer is reasonably in contemplation.**
>
> **(b) An offer-related arrangement means any agreement, arrangement or commitment in connection with an offer, including any inducement fee arrangement or other arrangement having a similar or comparable financial or economic effect, but excluding:**
>
> > **(i) a commitment to maintain the confidentiality of information provided that it does not include any other provisions prohibited by Rules 21.2(a) or 2.3(d) or otherwise under the Code;**
> >
> > **(ii) a commitment not to solicit employees, customers or suppliers;**
> >
> > **(iii) a commitment to provide information or assistance for the purposes of obtaining any official authorisation or regulatory clearance;**
> >
> > **(iv) irrevocable commitments and letters of intent; and**
> >
> > **(v) any agreement, arrangement or commitment which imposes obligations only on an offeror or any person acting in concert with it.**

(c) If there is any doubt as to whether any proposed agreement, arrangement or commitment is subject to this Rule, the Panel should be consulted at the earliest opportunity.".

Q9 Do you have any comments on the proposed new Rule 21.2?

(c) Dispensations from the general prohibition

(i) A competing offeror

3.15 The Code Committee considers that, where a non-recommended offer has been announced for an offeree company, the board of the offeree company might wish to seek a potential competing offeror, for example, a so-called "white knight". The Code Committee considers that, in those specific circumstances, it would further strengthen the position of the offeree company if it were permitted to agree an inducement fee with one competing offeror at the time that the competing offeror announces a firm intention to make an offer. The Code Committee therefore proposes to introduce a dispensation from the general prohibition in these limited circumstances.

3.16 However, the Code Committee believes that the scope of this dispensation should be restricted. The Code Committee therefore believes that the offeree company should be permitted to enter into an inducement fee arrangement with only one competing offeror, following the announcement of a firm intention to make a non-recommended offer by the first offeror, and only at the time that the competing offeror announces its firm intention to make a recommended offer. The Code Committee further believes that any inducement fee permitted under this proposed dispensation should also be subject to the provisos that:

(a) the value of the inducement fee is *de minimis*, i.e. normally no more than 1% of the value of the offeree company calculated by reference to the price of the competing offeror's offer at the time that it is announced

under Rule 2.5 (which would become Rule 2.7 under the changes proposed in section 2 of this PCP); and

(b) the inducement fee is payable only if an offer made by a party other than the competing offeror (including the original non-recommended offer, whether or not revised) becomes or is declared wholly unconditional.

3.17 Under the current Rule 21.2, the Panel's consent to an inducement fee arrangement is subject to certain "safeguards", including not only the requirement that the inducement fee must be *de minimis* but also that "the offeree company board and its financial adviser must confirm to the Panel in writing that, inter alia, they each believe the fee to be in the best interests of shareholders". As described above, the Code Committee believes that the circumstances in which this proposed dispensation would be available will be extremely limited. As such, the Code Committee considers that the additional safeguard of requiring written confirmations from the offeree company board and its financial advisers would not provide any meaningful additional protection.

3.18 In the light of the above, the Code Committee proposes to introduce a Note 1 on the new Rule 21.2, as follows:

"*1. A competing offeror*

Where an offeror has announced a firm intention to make an offer which was not recommended by the board of the offeree company at the time of that announcement and this remains the case, the Panel will normally consent to the offeree company entering into an inducement fee arrangement with one competing offeror at the time of the announcement of its firm intention to make a competing offer, provided that:

(a) the value of the inducement fee is de minimis (normally no more than 1% of the value of the offeree company calculated by reference to the price of the competing offer at the time of its announcement under Rule 2.7); and

(b) the inducement fee is payable only if an offer made by a party other than the competing offeror becomes or is declared wholly unconditional.".

Q10 Do you have any comments on the proposed new Note 1 on Rule 21.2?

(ii) Formal sale process

3.19 In Statement 2010/22, the Code Committee stated that it did not propose to extend the proposed general prohibition on deal protection measures and inducement fees to a situation where an offeree company board has initiated a formal process to sell the company by means of a public auction.

3.20 The Code Committee therefore proposes to introduce a Note 2 on the new Rule 21.2, as follows:

"*2. Formal sale process*

Where an offer period commences with an announcement by the offeree company that the board of the offeree company is seeking one or more potential offerors by means of a formal sale process, the Panel will normally grant a dispensation from the prohibition in Rule 21.2, such that the offeree company would be permitted, subject to the same provisos as set out in Note 1(a) and (b) above, to enter into an inducement fee arrangement at the conclusion of that process with one offeror (who had participated in that process) at the time of the announcement of its firm intention to make an offer. In exceptional circumstances, the Panel may also be prepared to consent to the offeree company entering into other offer-related arrangements with that offeror. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.".

Q11 Do you have any comments on the proposed new Note 2 on Rule 21.2?

(iii) Financial distress

3.21 The Code Committee considers that there might be circumstances in which a company is in such serious financial distress that the board of the offeree

company is actively seeking an offer to be made for it. In such circumstances, a potential offeror might be willing to make, or consider making, an offer only if it would be permitted to enter into a work-fee arrangement or other form of inducement fee arrangement and/or other offer-related arrangements. The Code Committee believes that the Panel should be able to grant a dispensation from the general prohibition in such cases under its general ability to derogate from the application of a Rule where it would operate unduly harshly or in an unnecessarily restrictive or burdensome or otherwise inappropriate manner and that there is no need to state this expressly in the proposed new Rule 21.2.

(d) "Whitewash" transactions

3.22 At present, Note 3 on Rule 21.2 provides that the Rule generally applies to the payment of an inducement fee in the context of a "whitewash" transaction. The Code Committee considers that the proposed general prohibition on offer-related arrangements, including inducement fee arrangements, should apply equally in the context of a "whitewash" transaction.

3.23 The Code Committee therefore proposes to introduce a Note 3 on the new Rule 21.2, as follows:

> "*3. "Whitewash" transactions*
>
> *Rule 21.2 also generally applies in the context of a "whitewash" transaction.*".

3.24 The Code Committee also proposes to make a minor amendment to section 4(h) of Appendix 1 to the Code, as set out in Appendix A to this PCP.

3.25 The Code Committee recognises that, where a "whitewash" transaction will involve a contribution of assets by an "offeror" to the "offeree company" in consideration for the issue of new shares, the two parties will need to enter into agreements in order to effect the transaction in question, for example, a sale and

purchase agreement or a subscription agreement. It is not the intention of the Code Committee to prohibit such transactions or to prevent them from becoming legally effective and the Code Committee considers that, in such cases, the parties or their advisers should consult the Panel.

Q12 Do you have any comments on the proposed new Note 3 on Rule 21.2?

(e) Disclosure and display of permitted offer-related arrangements

3.26 The Code Committee believes that all relevant details of any agreement, arrangement or commitment permitted under the proposed new Rule 21.2(b) or the proposed Notes on Rule 21.2 should be fully disclosed in the announcement made under Rule 2.5 (which would become Rule 2.7 under the changes proposed in section 2 of this PCP) and should be put on display in accordance with Rule 26.

3.27 The Code Committee therefore proposes to introduce a Note 4 on the new Rule 21.2, as follows:

> "*4. Disclosure and display*
>
> *All relevant details of any offer-related arrangement or other agreement, arrangement or commitment permitted under Rule 21.2 must be fully disclosed in the announcement made under Rule 2.7 and in the offer document or whitewash circular, as well as put on display in accordance with Rule 26.1.*".

3.28 See also the proposed new Rules 2.7(c)(vii), 24.3(d)(xv) and 26.1(d), as set out in Appendix A to this PCP.

Q13 Do you have any comments on the proposed new Note 4 on Rule 21.2?

(f) Schemes of arrangement

(i) Introduction

3.29 In Statement 2010/22, the Code Committee stated that it has no desire to restrict parties to an offer from using schemes of arrangement ("schemes") to implement recommended offers. The Code Committee recognises that schemes involve a court process which is led by the offeree company and that an implementation agreement contains, among other matters, provisions to provide the offeror with a degree of control over the court process to ensure that a scheme is implemented in an orderly and timely manner. In view of this, the Code Committee stated that it intended to propose amendments to the Code to provide that, where the board of an offeree company agrees to the inclusion of its recommendation in the offeror's announcement of its firm intention to make an offer by means of a scheme, it will be required to implement the scheme in accordance with a timetable to be agreed with the Panel in advance and published in the scheme circular, subject to the withdrawal of its recommendation.

3.30 The Code Committee believes, however, that any amendment proposed in relation to such matters must not undermine the Code Committee's intention to strengthen the position of the offeree company. Accordingly, the Code Committee considers it to be important that any requirements proposed to be imposed on the offeree company to implement a scheme should:

(a) apply only in relation to the implementation of a scheme timetable which the board of the offeree company has previously approved; and

(b) cease to apply if the board of the offeree company withdraws its recommendation of the scheme or if it announces a proposal to adjourn a shareholder meeting (or the court sanction hearing).

3.31 The Code Committee believes that, otherwise, the requirement for an offeree company to implement a scheme in accordance with the announced timetable would itself have a similar effect on the offeree company to the contractual provisions often found in implementation agreements which compel the offeree

company to convene and hold a shareholder meeting on a particular date, even where the board of the offeree company has withdrawn its recommendation (so-called "force the vote" provisions), which were one of the deal protection measures identified by the Code Committee in PCP 2010/2 and proposed to be prohibited in Statement 2010/22.

(ii) Obligation to implement the scheme in accordance with the published timetable

3.32 In the case of a contractual offer, the offer process does not require any action to be taken by the offeree company. A contractual offer comprises an offer by the offeror to the offeree company shareholders to acquire their shares, the acceptance of which will become binding upon the satisfaction, or waiver, of the conditions to the offer. When an offeror announces a firm intention to make an offer, it must normally:

(a) proceed to make that offer (see Rule 2.7);

(b) send the offer document to offeree company shareholders (and persons with information rights) within 28 days of its announcement (see Rule 30.1(a)); and

(c) use all reasonable efforts to ensure the satisfaction of any conditions to which it is subject (see Rule 13.4(b)).

3.33 In the case of a scheme of arrangement, however, while the obligations imposed by the Code on an offeror in a contractual offer (as referred to above) apply equally, the scheme process depends upon the actions of the offeree company. This is because a scheme involves the offeree company proposing an arrangement to its own shareholders and then prosecuting the scheme through the court in accordance with the court's procedural requirements. In the absence of a contractual commitment from the offeree company to take these actions, the Code

Committee believes that the Code should be amended to introduce certain obligations on the offeree company to take the actions necessary to implement the scheme, subject to certain exceptions.

3.34 Given that a scheme is proposed by the offeree company to its shareholders by means of a scheme circular, the Code Committee believes that, where the board of the offeree company has agreed to the inclusion of a statement of its intention to recommend a scheme in the offeror's announcement of its firm intention to make an offer (and has not withdrawn that recommendation), the Code should impose an obligation on the offeree company to ensure that the scheme circular is sent to its shareholders (and persons with information rights) within 28 days of that announcement, unless the Panel consents to a longer a period of time. This proposed obligation on the offeree company would be in addition to the obligation, imposed on the offeror under Rule 30.1(a), that the offer document, which is incorporated into the scheme circular in the case of a scheme, should normally be sent to shareholders (and persons with information rights) within 28 days of the announcement of the offeror's firm intention to make an offer. If the board of the offeree company ceases to recommend the offer, this obligation would fall away.

3.35 In addition, the Code Committee considers that the offeree company should be required to ensure that the expected timetable, including the expected dates and times for the principal stages of the scheme process, is set out in the scheme circular when published. The Code Committee believes that the offeree company should be required to announce the expected timetable upon publication of the scheme circular and that the Code should impose an obligation on the offeree company to implement the scheme in accordance with the published timetable but that this obligation should cease to apply if:

(a) the board of the offeree company withdraws its recommendation of the scheme;

(b) the board of the offeree company announces, as required by Section 6(a) of Appendix 7 to the Code, its decision to propose an adjournment of a shareholder meeting or court sanction hearing; or

(c) a shareholder meeting, or the court sanction hearing, is otherwise adjourned.

3.36 If, following one of the events described in paragraph 3.35 above, the board of the offeree company wishes to announce a new timetable (for example, in the event that it reinstates its recommendation of the offer), the Code Committee believes that it should first obtain the approval of the offeror and should then announce that agreed new timetable. Following the announcement of the agreed new timetable, the Code Committee believes that the offeree company should be required to implement the scheme in accordance with that new timetable, subject to the same exceptions as are described in paragraph 3.35.

(iii) Consequences of a withdrawal of the recommendation or an adjournment

3.37 The Code Committee further considers that, if one of the exceptions described in paragraph 3.35 applies, the Panel should consent to a request from the offeror to "switch" to a contractual offer. In such circumstances, the Code Committee considers that the offeror should be able to set the acceptance condition of the contractual offer at such level as it wishes. For example, the offeror may wish to include an acceptance condition set at up to 90% of the shares to which the offer relates in order to be able to make use of the compulsory acquisition procedure under section 979 of the Companies Act 2006.

(iv) Proposed amendments

3.38 The Code Committee therefore proposes to amend Appendix 7 to the Code by:

(a) introducing a new definition of "long-stop date" into the Definitions and Interpretation section of Appendix 7, as follows:

"**Long-stop date**

The date stated in the scheme circular to be the latest date by which the scheme must become effective and included as such in the terms of the scheme.";

(b) deleting the current Section 3 of Appendix 7 and introducing a new Section 3, as follows:

"**3 EXPECTED SCHEME TIMETABLE**

(a) Where an offeror announces a firm intention to make an offer which is to be implemented by means of a scheme of arrangement and the board of the offeree company agrees to the inclusion of a statement of its intention to recommend the scheme in that announcement then the offeree company must, except with the consent of the Panel, ensure that the scheme circular is sent to shareholders and persons with information rights within 28 days of that announcement. If the offeree company board subsequently withdraws its recommendation, this obligation will cease.

(b) The offeree company must ensure that the scheme circular sets out the expected timetable for the scheme, including the expected dates and times for the following:

(i) the record date for any shareholder meeting;

(ii) the latest date and time for the lodging of forms of proxy or elections for any alternative form of consideration;

(iii) the date and time of any shareholder meetings, which must normally be convened for a date which is at least 21 days after the date of the scheme circular;

(iv) the date and time of any meetings of the shareholders of the offeror to be convened in connection with the offer;

(v) the date of the court sanction hearing;

(vi) the record date for the purposes of the scheme and/or any reduction of capital provided for by the scheme;

(vii) the date and time of any proposed suspension in trading of shares or other securities of the offeree company;

(xiii) the date of any court hearing to confirm any reduction of capital provided for by the scheme;

(ix) the effective date;

(x) the date and time of the admission to trading of any offeror securities to be issued in connection with the scheme; and

(xi) the long-stop date.

(c) Upon publication of the scheme circular, the offeree company must announce in accordance with Rule 2.9 that the scheme circular has been published and include in that announcement the expected timetable, including the expected dates and times referred to in paragraph (b) above.

(d) The offeree company must implement the scheme in accordance with the expected timetable, as published, unless:

(i) the board of the offeree company withdraws its recommendation of the scheme;

(ii) the board of the offeree company announces, in accordance with Section 6(a) below, its decision to propose an adjournment of a shareholder meeting or court sanction hearing; or

(iii) a shareholder meeting or the court sanction hearing is adjourned.

See also Note 2 on Section 8 below.

(e) If, following one of the events set out in paragraph (d) above, the board of the offeree company wishes to announce a new timetable, the offeree company must first obtain the approval of the offeror to that new timetable and must then promptly announce that new timetable. Following such an announcement, the offeree company must implement the scheme in accordance with the new timetable, unless any of the exceptions referred to in paragraph (d) apply.";

(c) introducing a new Note 2 on Section 8 of Appendix 7, as follows:

"*2. Consequences of a withdrawal of recommendation etc.*

Where:

(a) the board of the offeree company withdraws its recommendation;

(b) the board of the offeree company announces, in accordance with Section 6(a) above, its decision to propose an adjournment to a shareholder meeting or the court sanction hearing;

(c) any shareholder meeting or the court sanction hearing is adjourned; or

(d) the Panel considers that the offeree company has not implemented the scheme in accordance with the published timetable,

the Panel will normally consent to a request from the offeror to switch to a contractual offer with an acceptance condition set at up to 90% of the shares to which the offer relates.".

Q14 Do you have any comments on the proposed amendments to Appendix 7?

4. Clarifying that offeree company boards are not limited in the factors that they may take into account in giving their opinion on an offer

4.1 In Statement 2010/22, the Code Committee noted that the majority of respondents to PCP 2010/2 were not in favour of amending the Code to be prescriptive in relation to the factors that the board of an offeree company should take into account in considering whether to recommend an offer. The Code Committee noted, however, that there appeared to be a perception among certain market participants that the board of an offeree company is bound by its obligations under the Code to consider the offer price as the determining factor in giving its opinion and deciding whether to recommend an offer. In view of this, the Code Committee concluded that amendments should be proposed to clarify that the Code does not limit the factors that the board of an offeree company is able to

take into account in giving its opinion on an offer, and reaching a conclusion as to whether it should recommend a bid, and is not bound by the Code to consider the offer price as the determining factor.

4.2 Under Rule 25.1(a), the offeree company board is required to send its opinion on an offer (including any alternative offers) to the shareholders in the offeree company. Under Rule 25.1(b), the offeree company board must state its reasons for forming its opinion and must include the views of the board on:

(a) the effects of the implementation of the offer on all the company's interests, including, specifically, employment; and

(b) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business.

4.3 Although Rule 25.1(b) requires that the board of the offeree company must include its view on certain matters when setting out its opinion, the provisions of the Code do not in any way limit the factors that the board may take into account in giving its opinion on an offer. In particular, when giving its opinion, the board of the offeree company is not required by the Code to consider the offer price as the determining factor and is not precluded by the Code from taking into account any other factors which it considers relevant, including matters relevant to the company itself (and its employees and other persons and matters to which the board is entitled, or required, to have regard), whether or not relevant to the current shareholders in the offeree company.

4.4 The Code Committee therefore proposes to introduce a new Note 1 on Rule 25.1 (which, if the amendments proposed in section 7 of this PCP are adopted, would become Rule 25.2), as follows:

"*1. Factors which may be taken into account*

The provisions of the Code do not limit the factors that the board of the offeree company may take into account in giving its opinion on the offer in accordance with Rule 25.2(a). In particular, when giving its opinion, the board of the offeree company is not required by the Code to consider the offer price as the determining factor and is not precluded by the Code from taking into account any other factors which it considers relevant.".

4.5 In addition, the Code Committee believes that the position of the offeree company board would be clarified further if the substance of Note 3 on Rule 3.1, in so far as it relates to the offeree board, were combined with the current Note 2 on Rule 25.1 (which would become Note 2 on Rule 25.2). The proposed amendments to Note 3 on Rule 3.1 and the new Note 2 on Rule 25.2 are set out in Appendix A to this PCP.

4.6 The Code Committee has also proposed a minor amendment to Note 1 on Rule 25.1 (which would become Note 3 on Rule 25.2). The proposed new Note 3 on Rule 25.2 is set out in Appendix A to this PCP.

Q15 Do you have any comments on the proposed new Note 1 on Rule 25.2 or the related amendments?

C: INCREASING TRANSPARENCY AND IMPROVING THE QUALITY OF DISCLOSURE

5. Requiring the disclosure of offer-related fees and expenses

(a) Introduction

5.1 In PCP 2010/2, the Code Committee identified possible arguments in favour of requiring advisers' fees to be disclosed under the Code as including that:

(a) fee agreements are material contracts entered into in connection with the offer, and that the Panel should require them to be disclosed as such;

(b) shareholders should be entitled to be provided with information as to how much of the company's money is being spent by the directors in relation to the offer, and that advisory fees are likely to account for a significant proportion of that expenditure; and

(c) the disclosure of an adviser's fees may give an indication of the degree to which the adviser may have an incentive to persuade its client to pursue a particular course of action (or may demonstrate that there is no such incentive).

5.2 The majority of respondents to PCP 2010/2 were in favour of greater disclosure being required in relation to the fees of advisers to offeree companies and offerors and the Code Committee concluded in Statement 2010/22 that the disclosure of offer-related fees should be required on the following basis:

(a) each of the parties to an offer should set out an estimate of aggregate fees in the offer document or offeree board circular (as appropriate) and that:

(i) the estimated fees of the advisers to each of the parties to an offer (including financial advisers and corporate brokers, accountants, lawyers and public relations advisers) should be disclosed separately, by category of adviser; and

(ii) fees in respect of financing should be disclosed separately from advisory fees;

(b) maximum and minimum amounts payable as a result of any success, incentive or ratchet mechanism should be disclosed, but without revealing commercially sensitive information regarding the offer; and

(c) any material changes to the disclosed estimated fees of the advisers to each of the parties to an offer should be announced promptly.

(b) Aggregate disclosure and disclosure by category

5.3 As indicated above, the Code Committee believes that offerors and offeree companies should be required to disclose an estimate of the aggregate fees and expenses expected to be incurred in relation to an offer and that they should also be required to provide a breakdown of the aggregate amount by category of adviser. The Code Committee also believes that an offeror should be required to disclose separately an estimate of the fees and expenses expected to be incurred in relation to the financing of the offer.

5.4 In addition to the categories of adviser referred to in paragraph 5.2(a)(i) above, the Code Committee believes that disclosure should also be required of fees and expenses incurred in relation to "other professional" advisers, including management consultants and actuaries and other specialist valuers, such as reserve engineers or mineral experts (in the context of an offer for a natural

resources company) and chartered surveyors (in the context of an offer for a property company).

5.5 The Code Committee therefore proposes to introduce a new Rule 24.16, in relation to the fees and expenses expected to be incurred by an offeror, as follows:

"**24.16 FEES AND EXPENSES**

(a) The offer document must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeror in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to:

(i) financial and corporate broking advice;

(ii) financing arrangements;

(iii) legal advice;

(iv) accounting advice;

(v) public relations advice;

(vi) other professional services (including, for example, management consultants, actuaries and specialist valuers); and

(vii) other costs and expenses.".

5.6 The Code Committee believes that equivalent provisions to those in the proposed new Rule 24.16 should apply with regard to the fees and expenses incurred by the offeree company. The Code Committee therefore proposes to introduce a new Rule 25.8 in relation to the fees and expenses expected to be incurred by the offeree company, as follows:

"**25.8 FEES AND EXPENSES**

The offeree board circular must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeree company in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to the matters

specified in paragraphs (i) to (vii) of Rule 24.16(a). The other provisions of Rule 24.16 and the Notes on Rule 24.16 will apply as if references to the offeror were references to the offeree company.".

Q16 Do you have any comments on the proposed new Rules 24.16(a) and 25.8?

(c) Financing fees and expenses

5.7 As regards the disclosure of fees and expenses incurred by the offeror in relation to financing arrangements, the Code Committee considers that disclosure should be made on the basis that the offer will complete and that the offer finance will be drawn-down in full. The Code Committee notes that these fees and expenses may comprise a number of different elements, for example:

(a) "up-front" fees, payable when the financing commitment is entered into (typically at the time of the announcement of a firm intention to make an offer);

(b) fees payable when the financing is drawn-down; and

(c) "commitment" fees, payable as a margin on the amount of financing committed for the period of time between commitment and drawdown.

The Code Committee considers that estimates of the fees described in paragraphs (a) and (b) should be disclosed under the proposed new Rule 24.16(a)(ii). However, given that the period of time between commitment and drawdown is likely to be uncertain, the Code Committee considers that commitment fees should be disclosed by means of providing the principal amounts of the financing facilities and the annual percentage rate applicable for the period of time between commitment and drawdown. The Code Committee considers that, in this regard, it would normally be sufficient to refer to the description of how the offer is to be financed (see section 6 of this PCP, which sets out proposed amendments to Rule 24.2(f), which would become Rule 24.3(f)).

5.8 The Code Committee therefore proposes to introduce a Note 1 on the new Rule 24.16, as follows:

> "*1. Financing fees and expenses*
>
> *Full details should be given of any fees and expenses payable, or estimated to be payable:*
>
> *(a) when a financing commitment is entered into; and*
>
> *(b) when the financing is drawn-down.*
>
> *Any commitment fees should normally be disclosed by means of describing the principal amounts of the financing facilities and the annual percentage rate applicable for the period of time between commitment and drawdown. A cross-reference to the description of how the offer is to be financed, as required under Rule 24.3(f), will normally be sufficient.*".

5.9 The Code Committee has considered whether there should be a requirement for offerors to disclose the fees or margins payable to banks or other counterparties in connection with hedging arrangements which relate to an offer, for example, in circumstances where an overseas offeror wishes to fix the exchange rate risk of making an offer in sterling. The Code Committee believes that such arrangements should be considered to be a matter of treasury management or risk mitigation, rather than offer-related fees or expenses. In any event, the Code Committee understands that the fees or margins payable may not be known at the time that the offer document is published and may be dependent upon proprietary positions held by the banks or counterparties concerned. Therefore, the Code Committee does not believe that the fees or margins payable in connection with hedging arrangements should be required to be disclosed.

Q17 Do you have any comments on the proposed new Note 1 on Rule 24.16?

(d) Variable and uncapped fees

5.10 In certain circumstances, the fees and expenses incurred by an offeror or offeree company may include an element that is variable between defined limits, for example as a result of an incentive arrangement, where an adviser may be entitled to a fee of £X plus up to £Y, depending on performance. Where there is a variable fee arrangement, the Code Committee believes that estimates of the maximum and minimum amounts payable should be disclosed. The Code Committee believes that such ranges should be disclosed in respect of both the aggregate fees payable and, where relevant, each of the categories described above.

5.11 In circumstances where a fee is not subject to a maximum amount, for example, where:

(a) the sum payable is at the discretion of the offeror or the offeree company without limits;

(b) the amount of the fee relates directly to the final value of the offer; or

(c) the fee will be calculated on a "time cost" basis,

the Code Committee believes that an estimate should be given, together with an indication of the nature of the arrangement.

5.12 The Code Committee believes that, where a particular category of fees and expenses includes a variable or uncapped fee arrangement, the fee range or estimate disclosed should reflect a reasonable estimate of the fees likely to be paid on the basis of the then current offer. Where a fee arrangement provides for circumstances in which a fee will or may increase, for example, where an offer is revised or where a competitive situation arises, the Code Committee believes that,

in order to avoid commercially sensitive information being revealed, it should not be necessary for the higher amount to be disclosed unless and until those circumstances arise.

5.13 The Code Committee therefore proposes to introduce a new Rule 24.16(b), and a Note 2 on Rule 24.16, as follows:

> "**(b) Where a fee is variable between defined limits, a range must be given in respect of the aggregate fees and expenses and of the fees and expenses of each relevant category, setting out the expected maximum and minimum amounts payable. See Note 2.**
>
> …
>
> *2. Variable and uncapped fee arrangements*
>
> *Where a fee is not subject to a maximum amount, this should be stated and an indication of the nature of the arrangement given (for example, whether the amount of the fee is discretionary, relates directly to the final value of the offer or will be calculated on a "time cost" basis).*
>
> *Where a particular category of fees and expenses includes a variable or uncapped element, the figure or range given should reflect a reasonable estimate of the fees likely to be paid on the basis of the then current offer.*
>
> *Where a fee arrangement provides for circumstances in which the fee will or may increase, for example where the offer is revised or a competitive situation arises, the higher amount will not be required to be disclosed unless and until such circumstances arise.*".

Q18 Do you have any comments on the proposed new Rule 24.16(b) and Note 2 on Rule 24.16?

(e) Where fees and expenses exceed the disclosed estimates

5.14 As indicated above, the Code Committee concluded in Statement 2010/22 that any material changes to the disclosed estimated fees payable to the advisers to the offeror or the offeree company should be announced promptly. Such material changes may occur where, for example, a fee arrangement:

(a) includes a ratchet mechanism or provides for circumstances in which the fee will be revised, such as a competitive situation arising, and the conditions for an increase in fees are triggered;

(b) is on a "time cost" basis and the estimated time commitment of the advisers in question increases materially; or

(c) is renegotiated during the course of the offer.

On reflection, the Code Committee considers that, rather than requiring an announcement to be made, it would normally be sufficient for any such material changes to be disclosed privately to the Panel, which would then be able to require an announcement to be made where it considered this to be appropriate.

5.15 In addition, the Code Committee believes that, if the final fees and expenses actually paid within a particular category materially exceed the amount previously disclosed as the estimated maximum payable, this should also be disclosed to the Panel. The Code Committee believes that such disclosure should be required even if payment is made after the offer period has ended. The Code Committee believes that it is necessary to include such a requirement as an anti-avoidance mechanism. However, the Code Committee anticipates that such disclosures would be made only rarely, on the basis that it would be unusual for there to be material uncertainty as to the quantum of fees and expenses by the time that the offer period ends.

5.16 The Code Committee therefore proposes to introduce a new Rule 24.16(c) and a new Rule 24.16(d) (which, by virtue of the proposed new Rule 25.8, would apply to offeree companies as well as to offerors), as follows:

"**(c) Where the fees and expenses payable within a particular category are likely materially to exceed the estimated maximum previously disclosed, the offeror must promptly disclose to the Panel revised estimates of the aggregate fees and expenses expected to be incurred in relation to the offer and of the fees and expenses expected to be incurred within that category. The Panel may require the public disclosure of such revised estimates where it considers this to be appropriate.**

(d) Where the final fees and expenses actually paid within a particular category materially exceed the amount publicly disclosed as the estimated maximum payable, the offeror must promptly disclose to the Panel the final amount paid in respect of that category. The Panel may require the public disclosure of such final amount where it considers this to be appropriate.".

Q19 Do you have any comments on the proposed new Rules 24.16(c) and (d)?

6. Requiring the disclosure of the same financial information in relation to an offeror and the financing of an offer irrespective of the nature of the offer

(a) Introduction

6.1 In Statement 2010/22, the Code Committee concluded that the Code should be amended so as to require the disclosure of the same financial information regarding an offeror and the financing of an offer irrespective of the nature of the offer, i.e. irrespective of whether the offer is a securities exchange offer (where shareholders in the offeree company might become shareholders in the offeror) or whether shareholders in the offeree company might become minority shareholders in a company controlled by the offeror. In reaching its conclusion, the Code Committee took into account that:

(a) constituencies other than offeree company shareholders have an interest in information regarding the financial position of the offeror and its group, including:

(i) the offeree company directors (having regard to their obligations under Rule 25.1 and their duties under section 172 of the Companies Act 2006);

(ii) the employees, customers, creditors and suppliers of both the offeree company and the offeror; and

(iii) the shareholders in the offeror; and

(b) information can now be incorporated into documents published under the Code by reference to other sources, including the website on which parties to offers are required to display offer-related documents, announcements and other information, such that offerors would be able to incorporate financial information into Code documents, and make that information publicly available, quickly, easily and with little incremental cost.

6.2 In addition, the Code Committee noted that a significant minority of the respondents to PCP 2010/2 supported the idea of requiring further disclosure to be provided by all offerors in relation to the financing of an offer, including the implications that the offer financing might have for the offeror, the offeree company and their respective businesses in the future, in order to enable the board of the offeree company and other interested constituencies to consider the effects of an offer on the merged business irrespective of the structure of the offer and the form of consideration.

(b) Disclosure of financial and other information

(i) Deletion of Rule 24.2(b) and Note 6 on Rule 24.2

6.3 At present, where the consideration offered is solely cash, and where the offeror is a company incorporated in the UK and its shares are admitted to the Official List

or to trading on AIM, Rule 24.2(b) requires less detailed financial information on the offeror to be included in an offer document than where the consideration offered includes securities (in which case Rule 24.2(a) applies). Where the offeror is not such a company, Rule 24.2(c)(i) requires the offer document to include the information described in Rule 24.2(a), so far as is appropriate, and such further information as the Panel may require in the particular circumstances of the case.

6.4 In addition, where an offer comprising solely cash consideration is structured so that no person will remain or become a minority shareholder in the offeree company (for example, where the offer is to be effected by means of a scheme of arrangement), Note 6 on Rule 24.2 provides that the disclosures that would otherwise be required in relation to the financial situation of the offeror, and in relation to the financing of the offer, may be largely dispensed with.

6.5 In view of its conclusion that detailed financial information on an offer and the financing of an offer should be disclosed in all offers, and not only in securities exchange offers, the Code Committee proposes to:

(a) delete Rule 24.2(b);

(b) delete Note 6 on Rule 24.2;

(c) delete the words in the first paragraph of Rule 24.2(a) (which, on account of other amendments proposed in this PCP, would be renumbered as Rule 24.3(a)) which limit its application to securities exchange offers; and

(d) make minor amendments to Rule 24.2(c) (which would become Rule 24.3(b)) and Note 2 on Rule 24.3 (as renumbered),

as set out in Appendix A to this PCP.

6.6 Consequential on the deletion of Rule 24.2(b), the Code Committee also proposes to delete Note 3 on Rule 24.2, which, in effect, treats all partial offers as if they were securities exchange offers, as this Note would become redundant.

6.7 In addition, the Code Committee proposes to amend and move Rule 24.2(d)(xii) (so as to become a new Rule 24.3(a)(vi)) to bring it into line with LR 13.4.1 of the UKLA's Listing Rules. Marked to show changes from the current Rule 24.2(d)(xii), the proposed new Rule 24.3(a)(vi) would provide as follows:

> "**(a) where ~~the consideration includes securities and~~ the offeror is a company …, the offer document must contain:**
>
> …
>
> **(vi) ~~in the case of a securities exchange offer,~~ a statement of the effect of full acceptance of the offer upon its earnings and assets and liabilities~~the offeror's assets, profits and business which may be significant for a proper appraisal of the offer;~~**".

Q20 Do you have any comments on the proposed deletion of Rule 24.2(b) and Note 6 on Rule 24.2 and the related amendments?

(ii) Incorporation by reference

6.8 At present, Rule 24.2(a) lists various items of financial and other information that are required to be included in an offer document in relation to the offeror and, by virtue of Rule 24.2(e), the offeree company. Almost all of the financial information listed in Rule 24.2(a) is information that will previously have been published by the offeror and the offeree company, for example, details of turnover and profit/loss published in respect of the last three financial years and statements of assets and liabilities and cash flow extracted from the last published audited accounts.

6.9 The Code Committee believes that, given the widespread use of websites for the dissemination of financial information, and given that it is now possible, under Rule 24.14, for much of the information listed in Rule 24.2(a) to be incorporated into offer documents by reference to such websites, Rule 24.2(a) should be amended so as to:

(a) delete the references to individual items of financial information that are required to be included in offer documents; and

(b) introduce a requirement that offer documents must include details of the website addresses where the audited accounts and interim statements and/or preliminary announcements of the parties to the offer for the last two financial years (a reduction of the current three year requirement) have been published.

The Code Committee believes that the accounts, statements and announcements referred to should then be treated as having been incorporated into the offer document under Rule 24.14, such that persons to whom the offer document is sent would be entitled to receive a hard copy of the information if they so wished, in accordance with Rule 24.14(c).

6.10 The Code Committee therefore proposes:

(a) to make various amendments to paragraphs (i) to (x) of Rule 24.2(a) (which would, in effect, become paragraphs (i) to (v) of Rule 24.3(a)); and

(b) to amend Rule 24.14(a) (which would become Rule 24.15(a)),

as set out in Appendix A to this PCP.

(iii) Changes in the financial or trading position since the last accounts

6.11 Rule 24.2(a)(iv) provides that, in a securities exchange offer, the offer document must contain details of:

(a) all known material changes in the financial or trading position of the offeror subsequent to the last published audited accounts; or

(b) a statement that there are no known material changes.

6.12 The Code Committee understands that the costs involved in assessing whether or not there have been any material changes in an offeror's financial or trading position since the date of its last accounts, in order to be in a position to make an appropriate statement in an offer document, can be considerable. However, it is arguable that the benefit of such a statement in the context of a cash offer is marginal. On balance, the Code Committee has concluded that it would be disproportionate to require such a statement to be made in an offer document where the consideration is solely cash and the Code Committee therefore proposes that, by way of exception to the principle that the new Rule 24.3(a) should apply to all offers, the provision that is currently Rule 24.2(a)(iv) should apply to securities exchange offers only.

6.13 In addition, the Code Committee proposes to amend the references to "material changes" to a company's financial or trading position in Rules 24.2(a)(iv), 25.2 and 27.1(b) so as refer to "significant changes". This would bring these provisions into line with Annex I of Appendix 3 to the UKLA's Prospectus Rules.

6.14 The Code Committee therefore proposes that the current Rule 24.2(a)(iv), which would become Rule 24.3(a)(v), should be amended as follows:

"**(a)** … **the offer document must contain:**

…

> **(v~~i~~iv) in the case of a securities exchange offer, all known ~~material~~ significant changes in ~~the~~ its financial or trading position ~~of the company~~ subsequent to the date of its last published audited accounts or a statement that there are no known ~~material~~ significant changes;**".

6.15 The proposed amendments to Rule 25.2 (which would become Rule 25.3) and Rule 27.1(b) are set out in Appendix A to this PCP.

(iv) Offerors to which Rule 24.2(a) applies

6.16 As indicated above, Rule 24.2(a) currently applies to an offeror which is incorporated in the UK whose shares are admitted to the Official List or to trading on AIM. The Code Committee believes that Rule 24.2(a) should be amended so as to apply to a UK-incorporated offeror with shares admitted to trading on any UK "regulated market" or with shares admitted to trading on AIM or PLUS.

6.17 The Code Committee therefore proposes to amend the first paragraph of Rule 24.2(a) (which would become Rule 24.3(a)) accordingly, as set out in Appendix A to this PCP. The Code Committee also proposes to amend the definitions of "regulated market" and "PLUS" in the Definitions section of the Code, as set out in Appendix A to this PCP.

(v) Minor and consequential amendments

6.18 The Code Committee also proposes to make a number of minor and consequential amendments to the current Rule 24.2(d), Rule 24.2(e), Notes 1 and 2 on Rule 25.2 and Rule 27.1(a), as set out in Appendix A to this PCP.

6.19 The Code Committee further proposes to introduce a new Section 14 of Appendix 7, as set out in Appendix A to this PCP, so as to provide greater clarity

as to which requirements of the Code should be incorporated into a scheme circular in the context of a scheme of arrangement.

Q21 Do you have any comments on the proposed new Rule 24.3(a) and the related amendments?

(c) Pro forma balance sheets and ratings agency ratings

6.20 In Statement 2010/22, the Code Committee stated that it intended to introduce new provisions into Rule 24.2 so as to require, where the offer is material, the inclusion in offer documents of:

(a) a *pro forma* balance sheet of the combined group; and

(b) details of the ratings attributed to the offeror by ratings agencies (and any changes that arise as a result of the offer).

(i) Pro forma balance sheets

6.21 Following discussions between the Panel Executive and a number of leading accountancy firms, the Code Committee considers that, in many cases, it could be unduly onerous to require the production of a *pro forma* balance sheet for inclusion in an offer document. For example, the advisers to an offeror may not have access to offeree company information or may not have sufficient time to establish an adequate factual basis for adjustments (or to conform financial statements compiled under different accounting standards) in order to prepare a *pro forma* to the appropriate standards (such as those which apply where a *pro forma* is required under the UKLA's Prospectus Rules or Listing Rules).

6.22 In addition, it has been suggested to the Code Committee that, since, by its nature, a *pro forma* is historical and would not reflect the adjustments and actions that

would be taken after completion of the transaction, it may not present a reliable starting point for assessing the financial position of the combined group.

6.23 In the light of the above, the Code Committee believes that the costs of including a *pro forma* balance sheet of the combined group in offer documents would outweigh the benefits and that such a requirement would therefore be disproportionate. Accordingly, the Code Committee has decided not to take this proposal forward.

Q22 Do you have any comments on the decision not to require *pro forma* balance sheets to be included in offer documents?

(ii) Ratings

6.24 The Code Committee continues to believe that the ratings and "outlooks" provided by rating agencies in respect of an offeror and the offeree company can provide valuable information as to how the financial strength and creditworthiness of the offeror may be affected by the offer and that, where the offeror or offeree company is so rated, disclosure should be made, whether or not the offer is material for the offeror.

6.25 The Code Committee therefore proposes to introduce a new Rule 24.3(c), as follows:

> "**(c) the offer document must contain details of the ratings and outlooks publicly accorded to the offeror and the offeree company by any rating agency prior to the commencement of the offer period, any changes made to those ratings or outlooks during the offer period and prior to the publication of the offer document, and a summary of the reasons given, if any, for any such changes;**".

Q23 Do you have any comments on the proposed new Rule 24.3(c) regarding the disclosure of ratings and outlooks?

(d) Offer financing

(i) Introduction

6.26 At present, Rule 24.2(f) provides as follows:

> "**(f) all offer documents must contain a description of how the offer is to be financed and the source of the finance. The principal lenders or arrangers of such finance must be named. Where the offeror intends that the payment of interest on, repayment of or security for any liability (contingent or otherwise) will depend to any significant extent on the business of the offeree company, a description of the arrangements contemplated will be required. Where this is not the case, a negative statement to this effect must be made;**".

6.27 In Statement 2010/22, the Code Committee stated that it intended to introduce amendments so as to require the debt facilities or other instruments entered into by an offeror in order to finance the offer to be disclosed in greater detail and irrespective of whether the payment of interest on, repayment of, or security for a liability is dependent to any significant extent on the business of the offeree company.

6.28 The Code Committee believes that readers of an offer document should be provided with information on how the offer is financed. The Code Committee believes that, together with the disclosure of financial information required in respect of all offerors, and in respect of the offeree company, this information will assist the reader in forming an analysis of the balance sheet and debt of the combined group following the completion of the transaction. The Code Committee considers that disclosure should be made of the various tranches of acquisition debt and equity financing in broad terms.

(ii) Commercial sensitivity

6.29 The Code Committee understands that an offeror may be commercially

disadvantaged if required to disclose the "headroom" that it may have secured in a financing agreement in order to be able to revise its offer. The Code Committee considers that an offeror should be required to disclose details of the financing for its current offer but that any potential increase in the facility that has been agreed need not be disclosed in the offer document (nor included in the copies of the documents put on display).

6.30 In addition, the Code Committee understands that private equity offeror vehicles may have complex financing structures, with various layers of debt, plus "equity" from a fund or funds of the private equity sponsor. This equity may in turn be leveraged and structured so as to include debt or preferred share capital. The Code Committee understands that the structures by which equity is provided to private equity offeror vehicles may be commercially sensitive and does not consider that such equity structures should be required to be disclosed in detail. For example, the Code Committee considers that a statement that the offeror vehicle's equity was to be provided as to £A million from the private equity house's European Fund I and £B million from its European Fund II would suffice. It would not, for example, be necessary to disclose the leverage within such funds or the split, categorisation or identity of the limited partners, general partners or other underlying participants in the equity financing.

(iii) Proposed amendments

6.31 In the light of the above, the Code Committee proposes to delete the current Rule 24.2(f) and to introduce a new Rule 24.3(f), as follows:

> "**(f) the offer document must contain a description of how the offer is to be financed and the source(s) of the finance. Details must be provided of the debt facilities or other instruments entered into in order to finance the offer and to refinance the existing debt or working capital facilities of the offeree company and, in particular:**
>
> **(i) the amount of each facility or instrument;**

(ii) the repayment terms;

(iii) interest rates, including any "step up" or other variation provided for;

(iv) any security provided;

(v) a summary of the key covenants;

(vi) the names of the principal financing banks; and

(vii) if applicable, details of the time by which the offeror will be required to refinance the acquisition facilities and of the consequences of its not doing so by that time;".

Q24 Do you have any comments on the proposed new Rule 24.3(f)?

(e) Documents on display

(i) Introduction

6.32 Rule 26 requires copies of certain documents to be made available for inspection and published on a website from the time the offer document or offeree board circular, as appropriate, is published until the end of the offer.

(ii) Financing documents

6.33 Currently, Rule 26(j) requires documents relating to the financing arrangements for the offer to be put on display, but only to the extent that the arrangements are described in the offer document in compliance with the third sentence of Rule 24.2(f), i.e. where the offeror intends that the payment of interest on, repayment of, or security for any liability will depend to a significant extent on the business of the offeree company (and where the requirements of Rule 24.2(f) have not been dispensed with under Note 6 on Rule 24.2).

6.34 In Statement 2010/22, the Code Committee concluded that the Code should be amended so as to require all documents relating to the financing arrangements for an offer to be put on public display. The Code Committee considers that such documents should be put on display without redaction.

(iii) Time at which documents are required to be put on display

6.35 The Code Committee believes that the time at which certain of the documents that are referred to in Rule 26 should be required to be put on display should be brought forward from the time that the offer document or offeree board circular is published to the time of the announcement of a firm intention to make an offer (or, if later, the date of the document). The Code Committee considers the relevant documents to be as follows:

(a) any irrevocable commitment or letter of intent procured by the offeror or offeree company (as appropriate) or any person acting in concert with it;

(b) any documents relating to the financing of the offer;

(c) any indemnity or other dealing arrangements of the kind referred to in Note 11 on the definition of "acting in concert"; and

(d) any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2 (as proposed to be amended in section 3 of this PCP).

6.36 The Code Committee believes that these agreements and arrangements will often be entered into shortly before or shortly after the announcement of a firm intention to make an offer and that they should be available for inspection by offeree company shareholders and other market participants from that time, and not only from the date on which the offer document or offeree board circular is

published, which may be a number of weeks later. In addition, the Code Committee believes that these documents should be available for inspection by the employee representatives of the offeree company in time for the employee representatives to have sufficient time to review them ahead of the publication of their opinion on the effects of the offer on employment under Rule 30.2(b) (see section 8 of this PCP).

(iv) Refinancing documents

6.37 The Code Committee believes that it should be made clearer in the Code that any refinancing or supplementary financing agreements entered into by the offeror should be put on display when they are entered into. In addition, the Code Committee believes that it should be made clearer that any such new arrangements should be described in any document subsequently sent by the offeror to shareholders of the offeree company and persons with information rights, in accordance with Rule 27.1.

(v) Other matters

6.38 The Code Committee believes that, given that all display documents are required to be published on a website, it would now be appropriate to dispense with the requirement for hard copies of display documents to be made available for inspection. The Code Committee believes that the requirement to do so should be replaced with requirements for each of the announcement of a firm intention to make an offer, the offer document and the offeree board circular to give details of the documents that have been published on a website in accordance with Rule 26 and of the address of the relevant website.

6.39 In addition, in view of the above proposal to amend Rule 24.2(a), such that offer documents would be required to include references to the websites on which the accounts of the offeror and the offeree company may be found, the Code

Committee believes that there would no longer be any need for a requirement for the accounts of the offeror and the offeree company to be put on display under Rule 26(b). Similarly, the Code Committee believes that the requirements for offer documents and offeree board circulars to be put on display under, respectively, Rules 26(o) and (p) are no longer necessary, given that these documents are required to be made available on a website for the duration of the offer under Rule 19.11(b).

(vi) Proposed amendments

6.40 The Code Committee therefore proposes to make various amendments to the Code, as described below:

(a) to introduce a new Rule 26.1, as follows:

"**26.1 DOCUMENTS TO BE ON DISPLAY FOLLOWING THE ANNOUNCEMENT OF AN OFFER**

Except with the consent of the Panel, copies of the following documents must be published on a website from the time of the announcement of a firm intention to make an offer (or, if later, the date of the document) until the end of the offer (including any related competition reference period):

(a) any irrevocable commitment or letter of intent procured by the offeror or offeree company (as appropriate) or any person acting in concert with it;

(b) any documents relating to the financing of the offer (Rule 24.3(f));

(c) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert; and

(d) any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2.";

(b) to amend the current Rule 26, which would become Rule 26.2, as set out in Appendix A to this PCP;

(c) to amend Note 5 on Rule 26, as follows:

"*5. Amendment, variation, ~~or~~ updating or replacement of documents on display*

If a document on display is amended, varied, ~~or~~ updated or replaced during the period in which it is required to be on display under Rule 26, then the amended, varied or updated document, or the replacement document, should also be put on display and a statement that this has been done should be included on the website.";

(d) to amend Rule 27.1(a), as follows:

"**27.1 MATERIAL CHANGES**

Documents subsequently sent to shareholders of the offeree company and persons with information rights by a party to the offer must contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period; if there have been no such changes, this must be stated. In particular, the following matters must be updated:—

(a) changes or additions to, or the replacement of, material contracts, irrevocable commitments or letters of intent or financing arrangements (Rules 24.2~~2~~3(a), (b~~c~~), ~~and~~ (d)(x) and (f) and 25.6~~6~~7(a) and (b));"; and

(e) to introduce new Rules 2.7(c)(ix), 24.3(d)(xvi) and 25.7(c), incorporating requirements to give details of documents published on a website under Rule 26 and the address of that website, as set out in Appendix A to this PCP.

6.41 Further amendments to Rules 24 and 25, relating to the publication of the offer documents and the offeree board circular are set out in section 7 of this PCP.

Q25 Do you have any comments on the proposed new Rules 26.1 and 26.2 or the related amendments?

D: PROVIDING GREATER RECOGNITION OF THE INTERESTS OF OFFEREE COMPANY EMPLOYEES

7. Improving the quality of disclosure by offerors and offeree companies in relation to the offeror's intentions regarding the offeree company and its employees

(a) Introduction

7.1 In Statement 2010/22, the Code Committee concluded that the Code should be amended so as to improve the quality of disclosure by offerors and offeree companies in relation to the offeror's intentions regarding the offeree company and its employees. The Code Committee concluded that, whilst wholesale changes to Rules 24.1 and 25.1 were not required, amendments should be made so as to require further disclosures to be made. In particular, the Code Committee concluded that:

(a) offerors should be required to make negative statements if they have no plans regarding the offeree company's employees, locations of business and fixed assets; and

(b) except with the consent of the Panel, statements in offer documents regarding an offeror's intentions in relation to the offeree company and, in particular, the offeree company's employees, locations of business and fixed assets (or the absence of any such plans), would be expected to hold true for a period of at least one year following the offer becoming or being declared wholly unconditional (save where another period is stated).

7.2 The Code Committee's conclusions in this regard were based on the fact that the ability of the board of the offeree company and other interested constituencies to comply with their own obligations, and to provide meaningful information to

offeree company shareholders and employees, depends on the accuracy and adequacy of the information published by the offeror in accordance with its own obligations.

(b) Negative statements

7.3 Rule 24.1 requires an offeror to describe in the offer document its intentions and plans for the offeree company, the offeror itself (if it is a company) and for the employees of the respective companies. The Code Committee believes that an offeror should be required to make negative statements if it has no intentions to make any changes in relation to certain of the matters referred to in Rule 24.1.

7.4 In addition to the matters currently covered in Rule 24.1, the Code Committee believes that an offeror should also be required to state its intentions with regard to the maintenance of any existing trading facilities for the offeree company's relevant securities, since this can be an important factor for shareholders in making their decision on an offer.

7.5 The Code Committee also proposes to re-order the sub-paragraphs of Rule 24.1(a) in order to bring them more into line with the way in which the requirements for the offeror are set out in Article 6(3)(i) of the Takeovers Directive.

7.6 The Code Committee therefore proposes to amend Rule 24.1 (which, as a result of other amendments proposed in this section 7, would become Rule 24.2), as follows:

> "**24.~~1~~2 INTENTIONS REGARDING THE OFFEREE COMPANY, THE OFFEROR COMPANY AND THEIR EMPLOYEES**
>
> **(a) ~~An offeror will be required to cover the following points i~~In the offer document, the offeror must state its intentions with regard to the future business of the offeree company and explain the long-term commercial justification for the offer. In addition, it must state:—**

~~**(a) its intentions regarding the future business of the offeree company;**~~

(i) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment;

(~~b~~ii) its strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's places of business;

(~~c~~iii) its intentions ~~regarding~~ with regard to any redeployment of the fixed assets of the offeree company; and

(iv) its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree company.

~~**(d) the long-term commercial justification for the proposed offer; and**~~

~~**(e) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment.**~~

(b) If the offeror has no intention to make any changes in relation to the matters described under (a)(i) to (iii) above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business, it must make a statement to that effect.

(c) Where the offeror is a company, and insofar as it is affected by the offer, the offeror must also ~~cover~~ state its intentions with regard to its future business and comply with (a)(i), ~~(b)~~ and (~~e~~ii) with regard to itself.".

Q26 Do you have any comments on the proposed new Rule 24.2?

(c) Statements to hold true for at least one year

7.7 As indicated above, the Code Committee concluded in Statement 2010/22 that an

offeror should be held to a statement in an offer document in relation to the matters described in the proposed new Rule 24.2 for a period of at least 12 months, or such other period as may be specified in the offer document, unless the Panel consents otherwise. After further consideration, the Code Committee now believes that the offeror should be so held not only to such statements in the offer document but also to other statements made during the offer period, whether in a document, an announcement or otherwise, relating to any course of action it intends to take or not to take.

7.8 The Code Committee believes that this requirement should, where appropriate, also apply to statements made by the board of the offeree company, whether in its circular, in an announcement or otherwise.

7.9 The Code Committee understands that the offeror or the board of the offeree company might say that it intends, or does not intend, to take a particular course of action within a specified time period, which might be either longer or shorter than 12 months. If so, the Panel will expect the relevant party to adhere to that stated time. If, however, no time period is specified for the taking, or not taking, of a stated course of action, then the 12 month period will apply.

7.10 If, within the 12 month period, or such other time period as may be specified in a statement of intentions, the party who made the statement takes action contrary to its stated intentions, or indicates that it intends to do so and the Panel was not satisfied that, on the basis of the information available to that party and its advisers when the statement was made, it was reasonable for the party to make the statement at that time, the Panel would then need to consider whether to instigate disciplinary action in relation to the party's compliance with Rule 19.1.

7.11 In the light of the above, the Code Committee proposes to introduce a new Note 3 on Rule 19.1 as follows:

"*3. Statements of intention*

A party to an offer must adhere to any public statement it makes during the offer period, whether in a document, an announcement or otherwise, relating to any course of action it intends to take, or not take, after the end of the offer period. Where no time period for the implementation, or non-implementation, of the course of action is specified, the statement must normally be adhered to for a period of at least 12 months from the date on which the offer becomes or is declared wholly unconditional.".

The current Notes 3 to 8 on Rule 19.1 would be renumbered as Notes 4 to 9.

Q27 Do you have any comments on the proposed new Note 3 on Rule 19.1?

(d) Clearer structure for the obligations in relation to the publication, content and display of documents

(i) Introduction

7.12 Following on from the changes proposed to Rule 26 in section 6 of this PCP, the Code Committee wishes to take this opportunity to rationalise a number of overlapping requirements with regard to the obligations of offerors and the boards of offeree companies in relation to the publication of documents, their content and their public display, with a view to creating a clearer structure for those obligations. The essential obligations with regard to the publication of each of the offer document and the offeree board circular are that, in addition to being sent to shareholders and persons with information rights and being made readily and promptly available to employee representatives or employees, they must be published on the same day on a website and an announcement made via a Regulatory Information Service ("RIS") that they have been so published (which announcement must include the relevant website address).

(ii) Publication of the offer document

7.13 The Code Committee believes that Rule 30.1(a) should be amended, as set out

below, and brought forward so as to become a new Rule 24.1. The existing Rules 24.1 to 24.14 would be renumbered accordingly.

7.14 Marked to show amendments to the current Rule 30.1(a), the new Rule 24.1 would read as follows:

> "~~30~~24.1 **THE OFFER DOCUMENT**
>
> **(a) ~~The offer document should~~ The offeror must, normally ~~be sent to shareholders of the offeree company and persons with information rights~~ within 28 days of the announcement of a firm intention to make an offer, send an offer document to shareholders of the offeree company and persons with information rights, in accordance with Rule 19.8. The Panel must be consulted if the offer document is not to be published within this period.**
>
> **(b) On the same day ~~of publication~~, the offeror must:**
>
> **(i) publish the offer document on a website in accordance with Rule 19.11; and**
>
> **(ii) ~~put the offer document on display in accordance with Rule 26 and~~ announce ~~in accordance with Rule 2.9~~ via a RIS that the offer document has been so published ~~and where it can be inspected~~.**
>
> **(~~b~~c) At the same time, both the offeror and the offeree company must make the offer document readily available to their employee representatives or, where there are no ~~such~~ employee representatives, to the employees themselves.**".

7.15 In Appendix A to this PCP, Rule 30.1(a) is shown as having been deleted and the new Rule 24.1 is shown as a new Rule.

(iii) Publication and contents of the offeree board circular

7.16 Similarly, the Code Committee proposes that Rule 30.2(a) should be deleted and its contents incorporated within Rule 25.1(a), as follows:

"**25.1 THE OFFEREE BOARD CIRCULAR**

~~(a)~~ The board of the offeree company must, normally within 14 days of the publication of the offer document, send a circular ~~its opinion on the offer (including any alternative offers),~~ to the offeree company's shareholders and persons with information rights, in accordance with Rule 19.8 and must, at the same time:

(a) publish the circular on a website in accordance with Rule 19.11;

(b) announce via a RIS that it has been so published; and

(c) make it readily available to its employee representatives or, where there are no employee representatives, to the employees themselves.".

7.17 A revised version of the current Note on Rule 30.2 would then become a new Note on Rule 25.1, as set out in Appendix A to this PCP.

7.18 The current Rule 25.1(b) would then become a new Rule 25.2, as follows:

"**25.~~1~~2 VIEWS OF THE BOARD ON THE OFFER, INCLUDING THE OFFEROR'S PLANS FOR THE COMPANY AND ITS EMPLOYEES**

(~~b~~a) The ~~opinion referred to in (a) above~~ offeree board circular must ~~include~~ set out the opinion of the board on the offer (including any alternative offers) and the board's reasons for forming its opinion and must include ~~the~~ its views ~~of the board of the offeree company~~ on:

(i) the effects of implementation of the offer on all the company's interests, including, specifically, employment; and

(ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business, as set out in the offer document pursuant to Rule 24.~~1~~2~~,~~.

~~and must state the board's reasons for forming its opinion.~~

(b) In addition, the circular must include the substance of the advice given to the board of the offeree company by the independent adviser appointed under Rule 3.1.".

The existing Rules 25.2 to 25.7 would be renumbered accordingly.

(iv) Revised offers

7.19 Rule 32.1(a) sets out the requirement for an offeror to send a revised offer document to shareholders of the offeree company and persons with information rights. Rule 32.7(a) requires both the offeror and the offeree company to make that revised offer document readily and promptly available to their employee representatives.

7.20 The Code Committee proposes that Rule 32.1 should be amended to make it consistent with the new format for Rule 24.1(a) proposed above, and that Rule 32.7(a) should be brought forward into a new Rule 32.1(b), in a similar manner to the proposed new Rule 24.1(c), as follows:

"**32.1 ~~OFFER OPEN FOR 14 DAYS AFTER~~ 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 ~~of publication~~, the offeror must: ~~put the revised offer document on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been published and where the document can be inspected~~

(i) publish the offer document on a website in accordance with Rule 19.11; and

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

(b) At the same time, both the offeror and the offeree company must make the revised offer document readily available to their

employee representatives or, where there are no employee representatives, to the employees themselves.".

The current Rule 32.1(b) would then become Rule 32.1(c).

7.21 Similarly, Rule 32.6(a) sets out the requirements for the publication of the offeree board's circular containing its opinion on a revised offer and Rule 32.7(b) requires the offeree board to make that circular readily and promptly available to its employee representatives. The Code Committee proposes to amend these Rules to reflect the new format for Rule 25.1 proposed above, such that Rule 32.7(b) would be incorporated into Rule 32.6 as a new Rule 32.6(a)(iii), as follows:

"**32.6 THE OFFEREE BOARD'S OPINION**

(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 ~~under~~ as required by Rule 25.1~~(a)~~, 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 19.11;

(ii) announce via a RIS that the circular has been published; and

(iii) make it readily and promptly available to its employee representatives or, where there are no employee representatives, to the employees themselves.

~~**On the day of publication, the offeree company must put the circular on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been published and where the document can be inspected.**~~".

As a result, Rule 32.7 would be deleted.

(v) Employee representatives and employees

7.22 In the light of the above proposals, the Code Committee believes that it may be useful to reiterate the views it expressed in PCP 2005/5 and the related Response Statement about how information might be made available to employee representatives and employees. The Code Committee said that it understood that companies have a wide variety of means of communicating with their employee representatives and employees, and that it did not therefore consider it necessary or appropriate to specify in the Code how the offeror and the offeree company might satisfy the relevant requirements of the Code. However, the Code Committee made clear its understanding that the Panel would consider that the requirements to make information available to employee representatives or employees had been complied with if employee representatives or employees were informed, through whatever means the company normally uses to communicate with its employees, of the existence of the relevant announcement or document and of where and how they might gain access to it.

(vi) Consequential amendments

7.23 In addition to the amendments proposed above, the Code Committee proposes to:

(a) move the current Rule 30.3, and the Note on Rule 30.3, into Rule 23, so as to become a new Rule 23.2 and Note on Rule 23.2;

(b) renumber the current Rule 23 as Rule 23.1;

(c) delete Note 3 on Rule 23, which would be become redundant; and

(d) combine and move the current Rules 24.2(h) and 25.1(c) so as to become a new Rule 23.3,

as set out in Appendix A to this PCP.

7.24 The Code Committee also proposes to move the current Rules 19.8 to 19.11 so as to become new Rules 30.1 to 30.4. If adopted, the necessary amendments will be set out in full in the Response Statement to this PCP.

Q28 Do you have any comments on the proposed new structure for the obligations in relation to the publication, content and display of documents?

8. Improving the ability of employee representatives to make their views known

(a) Introduction

8.1 In Statement 2010/22, the Code Committee concluded that the Code should be amended to improve communication between the board of the offeree company and the offeree company employees and employee representatives, with a view to enabling those employee representatives to be more effective in providing their opinion on the effects of the offer on employment. The Code Committee concluded that the Code should:

(a) make it clear that the Code does not prevent the passing of information in confidence during the offer period to employee representatives acting in their capacity as such;

(b) require offeree company boards to inform employee representatives at the earliest opportunity of their right under the Code to circulate an opinion on the effects of the offer on employment; and

(c) make it clear that it is the offeree company board's responsibility to publish the employee representatives' opinion at the offeree company's expense.

In addition, the Code Committee proposed that the Code should require the offeree company to pay the costs incurred by employee representatives in obtaining such advice as may reasonably be required for the verification of the information contained in the employee representatives' opinion.

(b) Definition of employee representative

8.2 In considering the amendments required to reflect the conclusions described in paragraph 8.1 above, the Code Committee concluded that it would be useful to include in the Code a definition of "employee representative" to clarify the scope of the offeror's and the offeree company's obligations for communicating with those representatives. Such a definition would also make it clear who has the right, under the existing Rule 30.2(b), to have a separate opinion on the effects of the offer on employment appended to the offeree board's circular.

8.3 The Code Committee considers that the definition should embrace both representatives of recognised trade unions and representatives elected or appointed to a position where it would be appropriate for them to receive information of the kind specified in the Code (i.e. information about the offer). The Code Committee considers that where, for example, the offeree company:

(a) has recognised a trade union in respect of one group of employees; and

(b) has put in place an agreement under the Information and Consultation of Employees Regulations 2004 ("ICE"), which may cover both employees in respect of whom a trade union is recognised and non-unionised employees, or has an elected staff council for employees not covered by trade union recognition arrangements,

both the representatives of the recognised trade union and the ICE representatives, or staff council representatives, should be able to put forward their views, but

only on behalf of those employees whom they respectively represent (recognising for these purposes that a group of employees may be represented by more than one representative body).

8.4 The Code Committee therefore proposes to introduce a new definition of "employee representative" into the Definitions section of the Code, as follows:

> "**Employee representative**
>
> An employee representative is:
>
> (a) a representative of a trade union, where such trade union has been recognised by the offeror or the offeree company in respect of some or all of its employees; and
>
> (b) any other person who has been elected or appointed to a position in which that person is expected to receive or where it is appropriate for that person to receive (having regard to the purpose for which such person was elected or appointed), on behalf of employees of the offeror or the offeree company, information of the kind specified in the Code.".

Q29 Do you have any comments on the proposed new definition of "employee representative"?

(c) The passing of information to employee representatives

8.5 The Code Committee believes that a new Note 6 on Rule 20.1 should make it clear that there is nothing to prevent information from being passed in confidence by an offeror or an offeree company to their respective employee representatives or employees, or by an offeror to the offeree company's employee representatives or employees, provided that the requirement for secrecy under Rule 2.1 is respected.

8.6 The Code Committee therefore proposes to introduce a new Note 6 on Rule 20.1, as follows:

"*6. Sharing information with employee representatives or employees*

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

(a) an offeror or the offeree company to their employee representatives or employees; or

(b) an offeror to the employee representatives or employees of the offeree company,

where the employee representatives or employees are acting in their capacity as such (rather than in their capacity as shareholders).

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

8.7 The final sentence of the existing Note 3 on Rule 20.1, the substance of which is replicated in the final sentence of the new Note 6 above, would be deleted.

Q30 Do you have any comments on the proposed new Note 6 on Rule 20.1?

(d) Requiring offeree companies to inform employee representatives of the right of employee representatives to give an opinion on the offer

8.8 Currently, employee representatives and employees of both the offeror and the offeree company are notified under Rule 2.6 when an announcement of a firm intention to make an offer has been made under Rule 2.5, as follows:

"**(b) Promptly after the publication of an announcement made under Rule 2.5:**

…

(ii) both the offeror and the offeree company must make that announcement, or a circular summarising the terms and conditions of the offer, readily available to their employee

representatives or, where there are no such representatives, to the employees themselves.".

Note 1 on Rule 2.6 requires the full text of the announcement to be made available when a summary circular is sent.

8.9 However, if an offer period begins before an announcement has been made under Rule 2.5 (for example with an announcement made under Rule 2.4), shareholders and persons with information rights are currently, under Rule 2.6(a), also sent a copy of that earlier announcement. The Code Committee believes that employee representatives of the offeree company, or, where there are no employee representatives, the employees themselves, should also be informed of the commencement of the offer period at that earlier point. In addition, the Code Committee considers that, whenever employee representatives or employees are so informed of the start of an offer period, or of the announcement of a firm intention to make an offer, they should also be informed of the right provided under Rule 30.2(b) (which, if other amendments proposed in this section 8 are adopted, would become Rule 25.9) for employee representatives to have a separate opinion on the offer, once it is made, appended to the offeree board circular, provided that such opinion is received in good time.

8.10 The Code Committee therefore proposes to amend what is currently Rule 2.6, which would become new Rule 2.12, as follows:

"**2.6<u>12</u> OBLIGATION ~~ON THE OFFEROR AND THE OFFEREE COMPANY~~ TO ~~PUBLISH~~ <u>SEND</u> ANNOUNCEMENTS <u>TO SHAREHOLDERS AND MAKE THEM AVAILABLE TO EMPLOYEE REPRESENTATIVES OR EMPLOYEES</u>**

(a) Promptly after the commencement of an offer period (except where an offer period begins with an announcement under Rule <u>2.7</u>~~2.5~~), a copy of the relevant announcement must be sent by the offeree company to its shareholders, persons with information rights and the Panel <u>and must be made readily available to its employee</u>

representatives or, where there are no employee representatives, to the employees themselves.

…

(d) When, under (a) or (b)(ii) above, the offeree company makes a copy of an announcement or a circular summarising the terms and conditions of the offer available to its employee representatives or employees, it must at the same time inform them of the right of employee representatives under Rule 25.9 to have a separate opinion appended to the offeree board's circular.".

8.11 The Code Committee also believes that the offeree company should inform its employee representatives or employees, when it informs them of a revised offer under the new Rule 32.1(b) proposed in section 7 of this PCP, of the right of employee representatives under Rule 32.6 to give an opinion on the effects of such a revised offer on employment. The Code Committee therefore proposes to add a further sentence to the new Rule 32.1(b), such that Rule 32.1(b) would then read as follows:

"**(b) At the same time, both the offeror and the offeree company must make the revised offer document readily available to their employee representatives or, where there are no employee representatives, to the employees themselves. The offeree company must also inform its employee representatives or employees of the right of employee representatives under Rule 32.6 to have a separate opinion on the revised offer appended to any offeree board circular published in relation to the revised offer.**".

Q31 Do you have any comments on the proposed new Rules 2.12(a) and (d) and second sentence of Rule 32.1(b)?

(e) Publication of the employee representatives' opinion and responsibility of the offeree company for costs

8.12 Rule 30.2(b) states as follows:

"**(b) The board of the offeree company must append to the circular containing its opinion a separate opinion from the representatives of**

its employees on the effects of the offer on employment, provided such opinion is received in good time before publication of that circular.".

8.13 In Statement 2010/22, the Code Committee addressed the need to make it clear that, under the current requirements, it is the offeree company's responsibility to publish the employee representatives' opinion, by appending it to the offeree board's circular, at the offeree company's expense. On further consideration, the Code Committee believes that the Code should also be amended to provide for the situation when the employee representatives' opinion is not received "in good time" before publication of the offeree board circular.

8.14 The words "in good time" derive from Article 9(5) of the Takeovers Directive and the Code Committee stated in Response Statement 2005/5 that it understands these words to mean "in sufficient time to publish [the employee representatives' opinion] with the offeree board's opinion". However, no provision is currently made for the situation when the employee representatives do not meet this deadline, such that, if their opinion was not received "in good time", it would not be required to be appended to the circular. The Code Committee considers that, since the time between publication of the offer document and publication of the offeree board circular is normally a maximum of 14 days, it would be reasonable to provide for some means of publication of an employee representatives' opinion which fails to meet that deadline, especially since, on a recommended offer, the offer document and the offeree board circular will normally be combined. However, the Code Committee considers that it would be unreasonable to require the offeree company to pay for the publication and circulation of the employee representatives' opinion in hard copy form in those circumstances since an additional mailing to all shareholders and persons with information rights could involve the offeree company incurring considerable extra expense in doing so. The Code Committee therefore believes that the offeree company should be obliged, in those circumstances, to publish the employee representatives' opinion on a website and to announce via a RIS that it has done so.

8.15 The Code Committee recognises that employee representatives might need to obtain advice in preparing their opinion on the effects of the offer on employment in order to ensure that any information contained in that opinion meets the standards for all information published during the course of an offer, as required by Rule 19.1. The Code Committee has concluded that it would be appropriate for the offeree company to pay for the costs that might reasonably be incurred by the employee representatives in obtaining such advice. While this will impose a cost burden on the offeree company, the Code Committee considers that it is likely to represent a relatively small addition to the offeree company's overall costs. This is on the basis that the employee representatives' opinion is limited to commenting on the effects of the offer on employment and should not involve, for example, the provision of investment advice to shareholders. In addition, the Code Committee considers that the cost is likely to be outweighed by the benefits to employee representatives, the offeree company (and its shareholders) and market participants of having the information contained in the employee representatives' opinion verified.

8.16 Following on from the revision of Rules 25.1, 25.2 and 30.2(a) proposed in section 7 of this PCP, the Code Committee proposes that:

(a) Rule 30.2(b) should be deleted and its contents moved to a new Rule 25.9; and

(b) Notes should be added to the new Rule 25.9:

(i) setting out the offeree company's responsibility to pay for the publication of the employee representatives' opinion and for the costs reasonably incurred to verify the information contained in that opinion; and

(ii) cross-referring to the requirements of the new Rule 2.12(d) described above.

8.17 The proposed new Rule 25.9 would therefore read as follows:

"**25.9 THE EMPLOYEE REPRESENTATIVES' OPINION**

The board of the offeree company must append to its circular a separate opinion from its employee representatives on the effects of the offer on employment, provided such opinion is received in good time before publication of that circular. Where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received within 14 days of the offer becoming or being declared wholly unconditional.

NOTES ON RULE 25.9

1. Offeree company's responsibility for costs

The offeree company must pay for the publication of the employee representatives' opinion and for the costs reasonably incurred by the employee representatives in obtaining any advice required for the verification of the information contained in that opinion in order to comply with Rule 19.1. (See also Rule 32.6(b).)

2. Notification of the rights of employee representatives under Rule 25.9

See Rule 2.12(d).".

8.18 The Code Committee proposes to make similar amendments to Rule 32.6(b), in order to deal with the publication of the employee representatives' opinion on any revised offer. Rule 32.6 would therefore be amended as follows:

"**32.6 THE OFFEREE BOARD'S OPINION AND THE EMPLOYEE REPRESENTATIVES' OPINION**

…

(b) The board of the offeree company must append to ~~the~~ its circular ~~containing its opinion on a revised offer~~ a separate opinion from ~~the~~ its employee representatives ~~of its employees~~ on the effects of the revised offer on employment, provided such opinion is received in good time before publication of that circular. Where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received within 14 days of the offer becoming or being declared wholly unconditional.

NOTE ON RULE 32.6

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

See Note 1 on Rule 25.9.".

Q32 Do you have any comments on the proposed new Rule 25.9 and amendments to Rule 32.6?

(f) Responsibility for the contents of the employee representatives' opinion

8.19 The proposal to introduce the new Note 1 on Rule 25.9 to make it clear that the offeree company will have responsibility for paying for the publication of the employee representatives' opinion, and for the verification of information contained in it, might lead to an inference that the board of the offeree company is also responsible for the contents of the employee representatives' opinion. The Code Committee considers that such an inference would be wrong and believes that Rule 19.2 should be amended to make it clear that the employee representatives' opinion is excluded from the scope of the offeree board's responsibility statement.

8.20 The Code Committee therefore proposes to amend Rule 19.2(a), as follows:

"**19.2 RESPONSIBILITY**

(a) … **This Rule does not apply to:**

(i) advertisements falling within … Rule 19.4; ~~and~~

(ii) advertisements … required by this Rule.; and

(iii) any separate opinion of the employee representatives of the offeree company on the effects of the offer on employment, as referred to in Rule 25.9 or Rule 32.6.".

Q33 Do you have any comments on the proposed new Rule 19.2(a)(iii)?

E: MISCELLANEOUS AMENDMENTS

9. Nature and purpose of the Code

9.1 As noted in Statement 2010/22, since the adoption of the Code in 1968, the focus of the Panel has been on the protection of offeree company shareholders and the maintenance of an orderly framework within which takeovers may be conducted.

9.2 The Code Committee does not believe that it is necessary or appropriate to change the fundamental nature and purpose of the Code. However, the Code Committee believes that it would be consistent with the amendments to the Code proposed in this PCP to emphasise that it is not the purpose of the Code either to facilitate or to impede the making of takeover offers. Section 2(a) of the Introduction to the Code could therefore be amended so as to make this explicit, as follows:

> "The Code is designed principally to ensure that shareholders in an offeree company are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders in the offeree company of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.
>
> The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the offeree company and its shareholders. In addition, it is not the purpose of the Code either to facilitate or to impede the making of takeover offers. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government and other bodies.
>
> The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to offeree company shareholders and an orderly framework for takeovers offers can be achieved. …".

9.3 Since section 2(a) of the Introduction to the Code is the responsibility of the Panel, and the matters set out in section 2(a) are specifically excluded from rule-

making functions delegated by the Panel to the Code Committee, any such change to section 2(a) would need to be made by the Panel itself.

Q34 Do you agree that the suggested amendments to section 2(a) of the Introduction to the Code would be consistent with the amendments to the Code proposed in this PCP?

10. Definition of "offer period"

10.1 The Code Committee considers that it should take this opportunity to amend the definition of "offer period" so as to provide greater clarity as to the types of announcement that will have the effect of commencing and ending an offer period.

10.2 The Code Committee therefore proposes to amend the definition of "offer period", as follows:

> "**Offer period**
>
> The offeree companies that are subject to an offer period at any particular time, and any offerors or publicly identified potential offerors, are set out in the Disclosure Table on the Panel's website at www.thetakeoverpanel.org.uk.
>
> An o~~O~~ffer period ~~means the period from the time~~ will commence when ~~an~~ the first announcement is made of an ~~proposed~~ offer or possible offer for a company, or when certain other announcements are made, such as an announcement that a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of the company.~~(with or without terms) until the first closing date or, if this is later, the date when the~~
>
> An offer period will end when an announcement is made that an offer has become~~s~~ or ~~is~~ has been declared unconditional as to acceptances, that a scheme of arrangement has become effective, that all announced offers have been withdrawn or have lapsed or following certain other announcements having been made (such as all publicly identified potential offerors having made a statement to which Rule 2.8 applies).~~ or lapses. An announcement that an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company is for sale or that the board~~

~~of a company is seeking potential offerors will be treated as the announcement of a possible offer. (See also Rule 12.2 regarding competition reference periods.)~~

~~In the case of a scheme of arrangement, the offer period will continue until it is announced in accordance with Section 5(c) of Appendix 7 that the scheme has become effective or that the scheme has lapsed or been withdrawn.~~

1. Schemes of arrangement

In the case of a scheme of arrangement, p~~P~~rovisions of the Code that apply during the course of the offer, or before the offer closes for acceptance, will apply until it is announced that the scheme has become effective or that it has lapsed or been withdrawn~~the same time~~.

2. Competition reference periods

See Rule 12.2.".

Q35 Do you have any comments on the proposed new definition of "offer period"?

11. Financing pre-conditions

11.1 Under the Note on Rules 13.1 and 13.3, the Panel will permit an offeror to make its offer subject to a pre-condition relating to financing only in the very limited circumstances described in that Note.

11.2 Where an offer announcement is subject to a permitted financing pre-condition, the Code Committee believes that it should be incumbent on an offeror and its advisers to notify the Panel if, at any stage, they become aware, or think it likely, that the financing pre-condition might not be satisfied. The Code Committee considers that, upon receipt of such a notification, and in order to prevent the creation of a false market in the shares of the offeree company, the Panel might require an appropriate announcement to be made. However, the Code Committee considers that the making of such an announcement should not of itself result in the offeror immediately being able to invoke the financing pre-condition (and to withdraw the offer) and that, in such circumstances, the offeror should normally

continue to use all reasonable efforts to satisfy the financing pre-condition and the other pre-condition(s) to which the offer is subject (in accordance with Rule 13.4(b)).

11.3 The Code Committee wishes to reiterate that, since the facility for an offeror to announce a firm intention to make an offer subject to a financing pre-condition represents a significant derogation from the principle that an offeror must only announce a bid after ensuring that it can fulfil any cash consideration in full, the Panel will be prepared to accept such a pre-condition in the first place only where the offeror and its financial adviser have confirmed in writing that they are not aware of any reason why the offeror would be unable to satisfy the financing pre-condition within 21 days after the satisfaction (or waiver) of any other pre-condition(s) to which the offer is subject.

11.4 The Code Committee proposes to amend the Note on Rules 13.1 and 13.3 so as to become a new Rule 13.4, and to introduce a new Rule 13.4(d), as follows:

> "**13.4 FINANCING CONDITIONS AND PRE-CONDITIONS**
>
> …
>
> **(d) If, at any time, the offeror or its financial adviser becomes aware, or considers it likely, that the offeror would be unable to satisfy a financing pre-condition, it must promptly notify the Panel.**".

The proposed new Rule 13.4 is set out in its entirety in Appendix A to this PCP.

Q36 Do you have any comments on the proposed new Rule 13.4?

F: ASSESSMENT OF THE IMPACT OF THE PROPOSALS

12. Proportionality, benefits and cost implications

12.1 The Code Committee believes that the amendments to the Code proposed in this PCP would be a proportionate response to the concerns raised by respondents to PCP 2010/2 and that the likely benefits of introducing the proposed amendments would outweigh the likely additional burdens and costs. The Code Committee believes that the key benefit of the proposals is that they should reduce the tactical advantage that "hostile" offerors have, in recent times, been able to obtain over offeree companies, to the detriment of offeree companies and their shareholders, and redress the balance in favour of the offeree company. In addition, the Code Committee believes that certain of the proposed amendments should improve the offer process by taking more account of the position of persons who are affected by takeovers in addition to offeree company shareholders.

(a) Increasing the protection for offeree companies against protracted "virtual bid" periods

12.2 The Code Committee believes that the benefits of the proposals set out in section 2 of this PCP include that:

(a) offeree companies would be subject to a shorter period of uncertainty and disruption prior to a firm offer being announced and would have a greater degree of control than at present over duration of that period;

(b) the requirement for the board of an offeree company to make a potentially difficult and contentious decision as to whether to identify a potential offeror, and/or to request the Panel to impose a so-called "put up or shut up" deadline, would be removed; and

(c) on the basis that the commencement of an offer period would result in the imposition of a 28 day deadline by which the offeror must, in the absence of the offeree company requesting an extension of the deadline, announce a firm offer, an offeror would have a strong incentive to avoid a leak of its potential interest in making an offer and, as a result, offers would be more likely to be conducted either through confidential discussions with the board of the offeree company, leading to the announcement of a recommended offer, or through the announcement of a formal "hostile" offer conducted in accordance with the established Code timetable.

12.3 The Code Committee recognises that representations have been made that a requirement that any potential offeror whose existence is referred to should be publicly identified in all circumstances might:

(a) in some cases, significantly deter potential offerors from approaching an offeree company (or result in them withdrawing from the offer process in order to avoid being publicly identified) and thereby reduce the number of offers made for companies to which the Code applies; and

(b) where the offeree company has been approached by two or more potential offerors, result in the public identification of one or more potential offerors who may have been in no way responsible for the events which triggered the requirement for an announcement to be made.

12.4 The Code Committee has therefore outlined in section 2 of this PCP an alternative approach to the identification of potential offerors. However, the Code Committee has concluded that the benefits of requiring the identification of potential offerors in all cases are not outweighed by the risk that the offerors might be deterred from making offers for companies to which the Code applies (which risk is, in any event, very difficult for the Code Committee to quantify), given that:

(a) the identity of the potential offeror is likely to be important information for offeree company shareholders and other market participants;

(b) the requirement would assist in reducing the tactical advantage that offerors have been able to obtain over offeree companies;

(c) the requirement would assist in providing a clear framework for the operation of the 28 day "put up or shut up" regime (including the operation of Rule 2.8);

(d) the requirement would obviate the need for the board of an offeree company to make a potentially difficult and contentious decision as to whether to identify a potential offeror; and

(e) the chances of an offeror not being publicly identified would only be marginally less under the alternative approach.

The Code Committee has therefore decided, on balance, that the suggested alternative approach should not be pursued.

(b) Strengthening the position of the offeree company

12.5 The Code Committee believes that the principal benefit of the proposals set out in section 3 of this PCP is that they will remove the pressure imposed by offerors on the boards of offeree companies to enter into comprehensive packages of deal protection measures which are designed to deter competing offerors and which, in practice, restrict the ability of the offeree company board to engage with potential competing offerors in a way that is detrimental to the interests of offeree company shareholders.

12.6 The Code Committee recognises that the proposed prohibition on inducement fees would, in effect, increase the costs of making an offer for an offeror who is out-bid by a competitor. However, where an inducement fee becomes payable by an offeree company, that cost is currently borne indirectly by offeree company shareholders. The Code Committee believes that it is appropriate and proportionate that the offeror, rather than offeree company shareholders, should bear these costs. In addition, the Code Committee has sought to reduce the risk that a prohibition of inducement fees will deter potential offerors (which risk is, in any event, very difficult for the Code Committee to quantify) by providing for a limited ability for the board of an offeree company to agree an inducement fee with one competing offeror following the announcement of a non-recommended offer.

12.7 The Code Committee believes that the proposals set out in section 4 of this PCP will provide clarity that the Code does not limit the factors that the boards of offeree companies may take into account in giving their opinion on an offer. The Code Committee does not believe that these proposals will result in any additional costs.

(c) Increasing transparency and improving the quality of disclosure

12.8 The Code Committee believes that the proposals set out in section 5 of this PCP will provide greater transparency as to the fees payable by offeree companies and offerors in relation to an offer, to the benefit of shareholders in those companies, who have a legitimate interest in understanding the costs being incurred on their behalf. The Code Committee recognises that some advisers might be reluctant to see this information disclosed but does not believe that such disclosure will have a material adverse impact and notes that the disclosure of fees is required in certain other jurisdictions.

12.9 The Code Committee believes that requiring the disclosure of the same financial information in relation to an offeror and the financing of an offer, irrespective of the nature of the offer, as proposed in section 6 of this PCP, will be of benefit not only to offeree company shareholders but also to other constituencies, such as: offeree company directors; employees, customers, creditors and suppliers of both the offeree company and the offeror; and offeror shareholders. Given the ability to incorporate much of this information into offer documentation by reference to existing sources, the Code Committee believes that the costs of these proposals should be minimal.

12.10 The Code Committee understands that the costs involved in assessing whether or not there have been any material changes in an offeror's financial or trading position since the date of its last accounts, in order to be in a position to make an appropriate statement in an offer document, can be considerable. However, it is arguable that the benefit of such a statement in the context of a cash offer is marginal. On balance, the Code Committee has concluded that it would be disproportionate to require such a statement to be made in an offer document where the consideration is solely cash and the Code Committee has therefore proposed that, by way of exception to the principle that the new Rule 24.3(a) should apply to all offers, the requirement for the disclosure of "significant changes" in a company's financial or trading position should apply to securities exchange offers only.

(d) Providing greater recognition of the interests of offeree company employees

12.11 The Code Committee believes that the proposals set out in section 7 of this PCP should result in better quality disclosure of the offeror's intentions regarding the offeree company, the offeror and their employees and of the offeree company board's opinion on those intentions. The Code Committee does not believe that any material costs should flow from the proposed amendments.

12.12 The Code Committee believes that the proposals set out in section 8 of this PCP should improve communication between the board of the offeree company and the offeree company employees and employee representatives, with a view to enabling those employee representatives to be more effective in providing their opinion on the effects of the offer on employment. The Code Committee recognises that the requirement for the offeree company to pay for the costs incurred by the employee representatives in verifying their opinion on the effects of the offer on employment will impose a cost burden on the offeree company but considers that this is likely to represent a relatively small addition to the offeree company's overall costs.

APPENDIX A

Proposed amendments to the Code

INTRODUCTION

2 THE CODE

…

(a) Nature and purpose of the Code[1]

The Code is designed principally to ensure that shareholders in an offeree company are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders in the offeree company of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the offeree company and its shareholders. In addition, it is not the purpose of the Code either to facilitate or to impede the making of takeover offers. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government and other bodies.

The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to offeree company shareholders and an orderly framework for takeovers offers can be achieved. …

DEFINITIONS

Employee representative

An employee representative is:

(a) a representative of a trade union, where such trade union has been recognised by the offeror or the offeree company in respect of some or all of its employees; and

[1] Section 2(a) of the Introduction to the Code is the responsibility of the Panel and the matters set out in section 2(a) are excluded from rule-making functions delegated by the Panel to the Code Committee. Any changes to section 2(a) would therefore need to be made by the Panel itself.

(b) any other person who has been elected or appointed to a position in which that person is expected to receive or where it is appropriate for that person to receive (having regard to the purpose for which such person was elected or appointed), on behalf of employees of the offeror or the offeree company, information of the kind specified in the Code.

…

Offer period

The offeree companies that are subject to an offer period at any particular time, and any offerors or publicly identified potential offerors, are set out in the Disclosure Table on the Panel's website at www.thetakeoverpanel.org.uk.

An o~~O~~ffer period ~~means the period from the time~~ will commence when ~~an~~ the first announcement is made of an ~~proposed~~ offer or possible offer for a company, or when certain other announcements are made, such as an announcement that a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of the company.~~(with or without terms) until the first closing date or, if this is later, the date when the~~

An offer period will end when an announcement is made that an offer has become~~s~~ or ~~is~~ has been declared unconditional as to acceptances, that a scheme of arrangement has become effective, that all announced offers have been withdrawn or have lapsed or following certain other announcements having been made (such as all publicly identified potential offerors having made a statement to which Rule 2.8 applies).~~ or lapses. An announcement that an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company is for sale or that the board of a company is seeking potential offerors will be treated as the announcement of a possible offer. (See also Rule 12.2 regarding competition reference periods.)~~

~~In the case of a scheme of arrangement, the offer period will continue until it is announced in accordance with Section 5(c) of Appendix 7 that the scheme has become effective or that the scheme has lapsed or been withdrawn.~~

1. Schemes of arrangement

In the case of a scheme of arrangement, p~~P~~rovisions of the Code that apply during the course of the offer, or before the offer closes for acceptance, will apply until it is announced that the scheme has become effective or that it has lapsed or been withdrawn~~the same time~~.

2. Competition reference periods

See Rule 12.2.

…

PLUS

The PLUS primary markets operated by PLUS Markets plc. ~~References to PLUS have been included in some Rules for clarity but, in cases of doubt, the Panel should be consulted.~~

…

Regulated market

Regulated market has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).

~~In relation to an EEA State that has not implemented Directive 2004/39/EC, regulated market has the same meaning as it has in Council Directive 93/22/EEC on investment services in the securities field (see Article 1(13)).~~

~~A list of regulated markets within the EEA is maintained on the website of the EU Commission: europa.eu.int/comm/index_en.htm. UK regulated markets are listed on the Panel's website: www.thetakeoverpanel.org.uk.~~

Rule 1

RULE 1. THE APPROACH

(a) An offeror (or its advisers) must notify a firm intention to make an offer ~~The offer must be put forward~~ in the first instance to the board of the offeree company (or ~~to~~ its advisers).

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

~~(c) A board so approached is entitled to be satisfied that the offeror is, or will be, in a position to implement the offer in full.~~

Rule 2

RULE 2. SECRECY BEFORE ANNOUNCEMENTS; THE TIMING AND CONTENTS OF ANNOUNCEMENTS

2.1 SECRECY

(a) ~~The vital importance of absolute secrecy before an~~ Prior to the announcement ~~must be emphasised.~~ of an offer or possible offer, a~~A~~ll persons privy to confidential information, and particularly price-sensitive information, concerning ~~an~~ the offer or ~~contemplated~~ possible offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if that person is made aware of the need for secrecy. All such persons must conduct themselves so as to minimise the chances of any ~~accidental~~ leak of information.

~~*NOTES ON RULE 2.1*~~

~~*1. Warning clients*~~

(b) ~~It should be an invariable routine for~~ Financial advisers must at the very beginning of discussions ~~to~~ warn clients of the importance of secrecy and security. Attention should be drawn to the Code, in particular to this Rule 2.1 and to restrictions on dealings.

~~*2. Proof printing*~~

~~*Proof printing documents before a public announcement has been made carries a particular risk of leaks of price-sensitive information; in cases where it is regarded as appropriate to undertake such printing, every possible precaution must be taken to ensure confidentiality.*~~

2.2 WHEN AN ANNOUNCEMENT IS REQUIRED

An announcement is required:

(a) when a firm intention to make an offer ~~(the making of which is not, or has ceased to be, subject to any pre-condition)~~ is notified to the board of the offeree company ~~from a serious source~~ by or on behalf of an offeror, irrespective of the attitude of the board to the offer;

(b) immediately upon an acquisition of any interest in shares which gives rise to an obligation to make an offer under Rule 9.1. …**;**

(c) when, following an approach by or on behalf of a potential offeror to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price;

(d) when, after a potential offeror first actively considers an offer but before an approach has been made to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation;

…

NOTES ON RULE 2.2

1. Panel to be consulted

(a) Whether … announcement.

(b) In the case of Rule 2.2(c), … circumstances.

(c) Similarly, in the case of Rules 2.2(d) and (f)(i), the Panel should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation or where there is a material or abrupt movement in its share price after the time when, in the case of Rule 2.2(d), an offer is first actively considered by a potential offeror or, in the case of Rule 2.2(f)(i), either the potential seller or the board starts to seek one or more potential purchasers or offerors.

(d) In the case of Rule 2.2(e), the Panel should be consulted if the potential offeror and/or the offeree company wish to approach a wider group than the very restricted number of people referred to in the Rule without making an announcement.

(e) In the case of Rule 2.2(f)(ii), … sought.

…

3. Rumour and speculation during an offer period

Where, during an offer period, rumour and speculation accurately and specifically identifies a potential offeror which has not previously been identified in any announcement, the Panel will normally require an announcement to be made by the offeree company or the potential offeror (as appropriate), identifying that potential offeror.

4. When a dispensation may be granted

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 such a dispensation has been granted, the potential offeror may not actively consider making an offer for the offeree company for a period of six months and will be treated as having made a statement to which Rule 2.8 applies. The Panel may consent to this restriction being set aside 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, permit the potential offeror to recommence active consideration of an offer provided that at least three months have expired since the dispensation was granted.

Where the potential offeror has ceased actively to consider making an offer, the Panel may nonetheless require an announcement to be made where:

(a) any rumour and speculation continues or is repeated; and/or

(b) it considers that this is otherwise necessary in order to prevent the creation of a false market.

2.3 RESPONSIBILITIES OF OFFERORS AND THE OFFEREE COMPANY

(a) Before a potential offeror approaches the board of the offeree company ~~is approached~~, the potential offeror is responsible ~~the responsibility~~ for making any announcement required under Rule 2.2~~can lie only with the offeror~~. ~~The offeror should, therefore, keep a close watch on the offeree company's share price for any signs of untoward movement.~~

(b) ~~The offeror is also responsible for making an announcement~~ When ~~once~~ an ~~Rule 9~~ obligation to make a mandatory offer under Rule 9.1 is ~~has been~~ incurred, the offeror is responsible for making the announcement required under Rule 2.2(b). See also Rule 7.1.

(c) Following an approach to the board of the offeree company ~~which may or may not lead to an offer~~, the offeree company is responsible ~~primary responsibility~~ for making any announcement required under Rule 2.2, except for an announcement required under Rule 2.2(b) or, where a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of a company without the involvement of the board of the offeree company, Rule 2.2(f) (in which case responsibility will rest with the vendor of the interest)~~will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price~~.

(d) A potential offeror must not attempt to prevent the board of an offeree company from making an announcement relating to a possible offer, or publicly identifying the potential offeror, at any time the board ~~thinks~~ considers appropriate.

2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

~~**(a) Except in the case of a mandatory offer under Rule 9, until a firm intention to make an offer has been notified, a brief announcement that talks are taking place (there is no requirement to name the potential offeror in such an announcement) or that a potential offeror is considering making an offer will normally satisfy the obligations under this Rule. Except with the consent of the Panel, such an announcement should also include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).**~~

~~**(b) At any time during an offer period following the announcement of a possible offer (provided the potential offeror has been publicly named), and before the notification of a firm intention to make an offer, the offeree company may request that the Panel impose a time limit for the potential offeror to clarify its intentions with regard to the offeree company. If a time limit for clarification is imposed by the Panel, the potential offeror must, before the expiry of the time limit, announce either a firm intention to make an offer for the offeree company in accordance with Rule 2.5 or that it does not intend to make an offer for the offeree company, in which case the announcement will be treated as a statement to which Rule 2.8 applies.**~~

(a) An announcement by the offeree company which commences an offer period must identify any potential offeror with whom the offeree company is in talks or from whom an approach has been received (and not unequivocally rejected).

(b) Any subsequent announcement by the offeree company which refers to the existence of a new potential offeror must identify that potential offeror, except where the announcement is made after an offeror has announced a firm intention to make an offer for the offeree company (see Rule 2.6(e)).

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

> **(i) specify the date on which any deadline thereby set in accordance with Rule 2.6(a) will expire; and**
>
> **(ii) include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).**

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 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.

2. Indemnity and other dealing arrangements

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

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

3. Formal sale process

See Note 2 on Rule 2.6.

2.5 TERMS AND PRE-CONDITIONS IN POSSIBLE OFFER ANNOUNCEMENTS

(ac) ~~Until a firm intention to make an offer has been notified, t~~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. Except with the consent of the Panel, if any such statement is ~~included in an announcement by a potential offeror or is~~ made by or on behalf of a potential offeror, its directors, officials or advisers and not immediately withdrawn if incorrect, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made, unless it reserved the right not to be so bound at the time the statement was made (see Note 1). In particular:

> **(i) where the statement concerned relates to the price of a possible offer (or a particular exchange ratio in the case of a ~~proposed~~ possible securities exchange offer), any offer made by the potential offeror for the offeree company will be required to be made on the same or better terms. Where all or part of the consideration is expressed in terms of a monetary value, the offer or that element of the offer must be made**

at the same or a higher monetary value. Where all or part of the consideration has been expressed in terms of a securities exchange ratio, the offer or that element of the offer must be made on the same (or an improved) securities exchange ratio; and

(ii) where the statement concerned includes reference to the fact that the terms of the possible offer "will not be increased" or are "final" or uses a similar expression, the potential offeror will not be allowed subsequently to make an offer on better terms.

~~**See also Note 5.**~~

(b~~d~~) ~~Except with the consent of the Panel, t~~The consequences of a statement to which Rule ~~2.4(c)~~ 2.5(a) applies will normally apply also to any person acting in concert with the potential offeror and to any person who is subsequently acting in concert with the potential offeror or such person.

~~*NOTES ON RULE 2.4*~~

~~*1. Pre-conditions*~~

(c) The Panel must be consulted in advance if, prior to announcing a firm intention to make an offer, a potential offeror ~~a person~~ proposes to ~~include in an announcement~~ any pre-conditions to the making of an offer. Any such pre-conditional possible offer announcement must:

(~~a~~i) clearly state whether or not the pre-conditions must be satisfied before an offer can be made or whether they are waivable; and

(~~b~~ii) include a prominent warning to the effect that the announcement does not amount to a firm intention to make an offer and that, accordingly, there can be no certainty that any offer will be made even if the pre-conditions are satisfied or waived.

~~*2. Announcement of a potential competing offer*~~

~~*The provisions of Rule 2.4(b) will not apply where an offer has already been announced by a third party and the potential offeror makes a statement that it is considering making a competing offer.*~~

~~*See Note 1 on Rule 19.3.*~~

~~*3. Period for clarification*~~

~~*The precise time limit imposed in any particular case under Rule 2.4(b) will be determined by reference to all the circumstances of the case and the Panel will endeavour to balance the potential damage to the business of the offeree company arising from the uncertainty caused by the potential offeror's interest against the disadvantage to its shareholders of losing the prospect of an offer.*~~

~~*4. Extension of time limit*~~

~~*A time limit for a potential offeror to clarify its intentions imposed under Rule 2.4(b) may be extended only with the consent of the Panel. The Panel's consent will normally be granted if the board of the offeree company consents to the extension.*~~

NOTES ON RULE 2.5

1~~5~~. Reservation of right to set statements aside

The first announcement in which a statement subject to Rule ~~2.4(c)~~ 2.5(a) is made must ~~also~~ contain prominent reference to any reservation (precise details of which must ~~also~~ be included ~~in the announcement~~). Any subsequent mention by the potential offeror of the statement must be accompanied by a reference to the reservation.

Except with the consent of the Panel, where a potential offeror has referred in a statement subject to Rule ~~2.4(c)~~ 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 unless 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 ~~2.4(c)~~ 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 ~~2.4(c)(ii)~~ 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 ~~possible offer~~ 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 no longer be permitted to exercise any right to set aside a statement in relation to the level of consideration or any right to vary the form and/or mix of the consideration.

2~~6~~. Duration of restriction

The restrictions imposed by Rule ~~2.4(c)~~ 2.5(a) will normally apply throughout the period during which the offeree company is in an offer period and for a further three months thereafter.

However, where a potential offeror has made a statement to which Rule 2.8 applies but the offeree company remains in an offer period, the restrictions imposed by Rule ~~2.4(c)~~ 2.5(a) will normally apply for three months following the making of the statement to which Rule 2.8 applies.

3~~7~~. Statements by the offeree company

Any statement made by the offeree company in relation to the terms on which an offer might be made must ~~also~~ make clear whether or not it is being made with the agreement or approval of the potential offeror. Where the statement is made with the agreement or approval of the potential offeror, the statement will be treated as one to which Rule ~~2.4(c)~~ 2.5(a) applies in the same way as if it had been made by the potential offeror itself. Where it is not so made, the statement must also include a prominent warning to the effect that there can be no certainty that an offer will be made nor as to the terms on which any offer might be made.

[current Notes 8 and 9 on Rule 2.4 to be deleted/moved to Notes 1 and 2 on the proposed new Rule 2.4]

2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT

(a) Subject to Rule 2.6(b), by not later than 5.00 pm on the 28th day following the date of the announcement in which it is first identified, or by not later than any extended deadline, a potential offeror must:

(i) announce a firm intention to make an offer in accordance with Rule 2.7;

(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; or

(iii) together with the offeree company, obtain the Panel's consent to an extension of the deadline.

(b) Rule 2.6(a) will not apply, or will cease to apply, to a potential offeror if another offeror has already announced, or subsequently announces (prior to the relevant deadline), a firm intention to make an offer for the offeree company. In such circumstances, the potential offeror will be required to clarify its intentions in accordance with Rule 2.6(d) below;

(c) The Panel will consent to an extension of a deadline set in accordance with Rule 2.6(a), or any previously extended deadline, at the request of the board of the offeree company and after taking into account all relevant factors, including:

(i) the status of negotiations between the offeree company and the potential offeror; and

(ii) the anticipated timetable for their completion.

Where the Panel consents to an extension of a deadline, the offeree company must promptly announce the details of the new deadline and the matters referred to in paragraphs (i) and (ii) above.

(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, 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 also Section 4 of Appendix 7 in the case 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, 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 made a statement to which Rule 2.8 applies.

NOTES ON RULE 2.6

1. Requests for deadline extensions

When a request to extend a deadline set under Rule 2.6(a) is made, the Panel will normally give its decision shortly before the time at which the deadline is due to expire.

2. Formal sale process

Where an offer period commences with an announcement by the board of the offeree company 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) and Rule 2.6(a), such that any potential offeror who agrees with the offeree company to participate in that process and in respect of whom an announcement is subsequently made 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.

2.5~~7~~ THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

(a) An offeror should ~~only~~ announce a firm intention to make an offer only after the most careful and responsible consideration~~. Such an announcement should be made only~~ and when ~~an~~ the offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.

(b) Following an announcement of a firm intention to make an offer, the offeror must proceed to make the offer unless, in accordance with the provisions of Rule 13, it is permitted to invoke a pre-condition to the making of the offer or would be permitted to invoke a condition to the offer if the offer were made. However, with the consent of the Panel, an offeror need not make the offer if a competing offeror subsequently announces a firm intention to make a higher offer.

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

(i) … **;**

(ii) … **;**

(iii) all conditions ~~(including normal conditions relating to acceptances, admission to listing, admission to trading and increase of capital)~~ or pre-conditions to which the offer or the making of an offer is subject;

(iv) … **;**

(v) … **;**

(vi) … **;**

(vii) details of any offer-related arrangement or other agreement, arrangement or commitment ~~for the payment of an inducement fee or similar arrangement referred to in~~ permitted under, or excluded from, Rule 21.2; ~~and~~

(viii) … **~~.~~; and**

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

(d~~c~~) …

NOTES ON RULE ~~2.5~~2.7

1. Unambiguous language

…

2. Conditions and pre-conditions

The Panel must be consulted in advance if a person proposes to include in an announcement:

(a) any pre-condition to which the making of an offer will be subject (see Rule 13.3);

(b) a condition or pre-condition relating to financing (see Rule 13.4); or

(c) any conditions which are not entirely objective (see Rule 13.1).

~~*2. Subjective conditions*~~

~~*Companies and their advisers should consult the Panel prior to the publication of any announcement containing conditions which are not entirely objective (see Rule 13).*~~

~~*3. New conditions for increased or improved offers*~~

~~*See Rule 32.4.*~~

~~*4. Pre-conditions*~~

~~*The Panel must be consulted in advance if a person proposes to include in an announcement any pre-condition to which the making of an offer will be subject. (See also Rule 13.)*~~

~~*5. Financing conditions and pre-conditions*~~

~~*See the Note on Rules 13.1 and 13.3.*~~

[current Rule 2.6 and the Notes on Rule 2.6 to be deleted and replaced by the new Rule 2.12 and the Notes on Rule 2.12]

~~**2.7 CONSEQUENCES OF A "FIRM ANNOUNCEMENT"**~~

~~**When there has been an announcement of a firm intention to make an offer, the offeror must normally make an offer unless, in accordance with the provisions of Rule 13, the offeror is permitted to invoke a precondition to the making of an offer or would be permitted to invoke a condition to the offer if the offer were made.**~~

~~*NOTE ON RULE 2.7*~~

~~*When there is no need to make an offer*~~

~~*With the consent of the Panel, an announced offeror need not make an offer if a competitor has already announced a firm intention to make a higher offer.*~~

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 with the consent of the Panel, ~~unless there is a material change of circumstances or there has occurred an event which the person specified in his statement as an event which would enable it to be set aside,~~ neither the person making the statement, nor any person who acted in concert with <u>that person</u> ~~him~~, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:

…

NOTES ON RULE 2.8

…

2. <u>When consent may be given</u>~~Rules 2.4(b) and 12.2(b)~~

<u>The Panel will normally only give its consent under this Rule if:</u>~~Where a statement to which Rule 2.8 applies is made following a time limit being imposed under Rule 2.4(b) or pursuant to Rule 12.2(b)(ii)(A), the only matters that a person will normally be permitted to specify in the statement as matters which would enable it to be set aside are:~~

(a) ~~the agreement or recommendation of~~ the board of the offeree company <u>agrees to the statement being set aside. Where the statement was made at any time following the announcement by a third party of a firm intention to make an offer, such consent will not normally be given unless that offer has been withdrawn or has lapsed</u>;

(b) ~~the announcement of an offer by~~ a third party <u>announces a firm intention to make an offer</u> for the offeree company; ~~and~~

(c) ~~the announcement by~~ the offeree company ~~of~~ <u>announces</u> a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or ~~of~~ a reverse takeover (see Note 2 on Rule 3.2)~~.~~<u>;</u>

<u>(d) there has been any other material change of circumstances; or</u>

<u>(e) the statement was made outside an offer period and an event has occurred which was specified in the statement as being an event which would enable the statement to be set aside (see Note 1).</u>

3. Concert parties

…

The restrictions imposed by Rule 2.8 will, however, normally apply to any person acting in concert with the person making the statement to which the Rule applies

if the statement is made during an offer period~~following a time limit being imposed under Rule 2.4(b)~~.

4. Media reports

When considering the application of ~~this~~ Rule 2.8, the Panel will take into account not only the statement itself but the manner of any subsequent public reporting of it.

…

2.9 ~~PUBLICATION OF AN~~ ANNOUNCEMENT ~~ABOUT~~ OF AN OFFER OR POSSIBLE OFFER TO BE PUBLISHED VIA A RIS

…

[cross-references to other Rules in the Notes on Rule 2.9 to be updated]

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 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 ~~named~~ offeror must also announce the same details relating to its relevant securities by 9.00 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.

…

2.11 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

…

NOTES ON RULE 2.11

1. Timing of disclosure

…

No separate disclosure by an offeror is required under Rule 2.11(a) where the relevant information is included in an announcement made under Rule ~~2.5~~ 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.

2. Method of disclosure

Disclosure under this Rule 2.11 should be made in accordance with the requirements of Rule 2.9. See also Rule 26 (documents to be on display).

3. Contents of disclosure

…

(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 ~~under Rule 2.5~~, the value (and any other material terms) of the possible offer in respect of which the commitment or letter has been procured. (See Rule 2.5(a)~~2.4(c)~~.)

…

2.12 OBLIGATION TO SEND ANNOUNCEMENTS TO SHAREHOLDERS AND MAKE THEM AVAILABLE TO EMPLOYEE REPRESENTATIVES OR EMPLOYEES

(a) Promptly after the commencement of an offer period (except where an offer period begins with an announcement under Rule 2.7), a copy of the relevant announcement must be sent by the offeree company to its shareholders, persons with information rights and the Panel and must be made readily available to its employee representatives or, where there are no employee representatives, to the employees themselves.

(b) Promptly after the publication of an announcement made under Rule 2.7:

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

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

(c) Where necessary, the offeror or the offeree company, as the case may be, should explain the implications of the announcement and, in the case of the offeree company, the fact that addresses, electronic addresses and certain other information provided by offeree company shareholders, persons with information rights and other relevant persons for the receipt of communications from the offeree company may be provided to an offeror

during the offer period as required under Section 4 of Appendix 4. Any circular published under this Rule should also include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).

(d) When, under (a) or (b)(ii) above, the offeree company makes a copy of an announcement or a circular summarising the terms and conditions of the offer available to its employee representatives or employees, it must at the same time inform them of the right of employee representatives under Rule 25.9 to have a separate opinion appended to the offeree board's circular.

NOTES ON RULE 2.12

1. Full text of announcement under Rule 2.7 to be made available

Where, following an announcement made under Rule 2.7, a circular summarising the terms and conditions of the offer is sent to shareholders, persons with information rights, employees or employee representatives, the full text of the announcement must be made readily and promptly available to them, for example, by publishing it on the website of the offeror or the offeree company (as the case may be).

2. Shareholders, persons with information rights, employees and employee representatives outside the EEA

See the Note on Rule 23.2.

3. Holders of convertible securities, options or subscription rights

Copies of announcements sent to offeree company shareholders and persons with information rights under Rule 2.12 must also, where practicable, be sent simultaneously to the holders of securities convertible into, rights to subscribe for and options over, shares of the same class as those to which the offer relates. An explanation must also be provided that addresses, electronic addresses and certain other information provided for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under Section 4 of Appendix 4.

Rule 3

RULE 3. INDEPENDENT ADVICE

3.1 BOARD OF THE OFFEREE COMPANY

…

NOTES ON RULE 3.1

…

3. When no recommendation is given ~~or there is a divergence of views~~

When ~~it is considered~~ the independent adviser considers it impossible to express a view on the merits of an offer, or to give a firm recommendation in its advice to the board of the offeree company, ~~or when there is a divergence of views amongst board members or between the board and the independent adviser as to either the merits of an offer or the recommendation being made,~~ this must be stated and an explanation given, including the arguments for acceptance or rejection, emphasising the important factors.

The Panel should be consulted in such cases~~advance about the explanation which is to be given~~.

Rule 7.1

7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED

…

NOTE ON RULE 7.1

Potential offerors

The requirement of this Rule to make an immediate announcement applies to any ~~publicly announced~~ potential offeror whose existence has been referred to in an announcement by the offeree company (whether ~~named~~ publicly identified or not) either where a public ~~indication~~ statement of the level of its ~~probable~~ 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 where ~~there already exists an offer from~~ 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 8

RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS

…

NOTES ON RULE 8

…

12. Potential offerors

(a) If a potential offeror has been referred to in an announcement by the offeree company ~~the subject of an announcement that talks are taking place~~ but has not been publicly identified as such~~named~~, 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 in accordance with Rule 8.1(b) or Rule 8.4 respectively.

Rule 13

13.3 ACCEPTABILITY OF PRE-CONDITIONS

…

~~*NOTE ON RULES 13.1 and 13.3*~~

13.4 FINANCING CONDITIONS AND PRE-CONDITIONS

(a) Subject to Rules 13.4(b) and (c), a~~A~~n offer must not ~~normally~~ be made subject to a condition or pre-condition relating to financing. ~~However:~~

(b~~a~~) W~~w~~here the offer is for cash, or includes an element of cash, and the offeror proposes to finance the cash consideration by an issue of new securities, the offer must be made subject to any condition required, as a matter of law or regulatory requirement, in order validly to issue such securities or to have them listed or admitted to trading. Conditions which will normally be considered necessary for such purposes include:

(i) the passing of any resolution necessary to create or allot the new securities and/or to allot the new securities on a non-pre-emptive basis (if relevant); and

(ii) where the new securities are to be admitted to listing or to trading on any investment exchange or market, any necessary listing or admission to trading condition (see also Rule 24.~~9~~10).

Such conditions must not be waivable and the Panel must be consulted in advance.~~; and~~

(c~~b~~) I~~i~~n exceptional cases, the Panel may be prepared to accept a pre-condition relating to financing either in addition to another pre-condition permitted by ~~this~~ Rule 13.3 or otherwise~~;~~, for example where, due to the likely period required to obtain any necessary material official authorisation or regulatory clearance, it is not reasonable for the offeror to maintain committed financing throughout the offer period~~, in which~~. In such a case:

(i) the financing pre-condition must be satisfied (or waived), or the offer must be withdrawn, within 21 days after the satisfaction (or waiver) of any other pre-condition or pre-conditions permitted by ~~this~~ Rule 13.3; and

(ii) the offeror and its financial adviser must confirm in writing to the Panel before announcement of the offer that they are not aware of any reason why the offeror would be unable to satisfy the financing pre-condition within that 21 day period.

(d) If, at any time, the offeror or its financial adviser becomes aware, or considers it likely, that the offeror would be unable to satisfy a financing pre-condition, it must promptly notify the Panel.

Rule 19

19.1 STANDARDS OF CARE

…

NOTES ON RULE 19.1

…

3. Statements of intention

A party to an offer must adhere to any public statement it makes during the offer period, whether in a document, an announcement or otherwise, relating to any course of action it intends to take, or not take, after the end of the offer period. Where no time period for the implementation, or non-implementation, of the course of action is specified, the statement must normally be adhered to for a period of at least 12 months from the date on which the offer becomes or is declared wholly unconditional.

[current Notes 3 to 8 on Rule 19.1 would be renumbered as Notes 4 to 9]

19.2 RESPONSIBILITY

(a) … This Rule does not apply to:

(i) advertisements falling within … Rule 19.4; ~~and~~

(ii) advertisements … required by this Rule.; and

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

…

19.3 UNACCEPTABLE STATEMENTS

…

NOTES ON RULE 19.3

~~1. Holding statements~~

~~While an offeror may need to consider its position in the light of new developments, and may make a statement to that effect, and while a potential competing offeror may make a statement that it is considering making an offer, it is not acceptable for such statements to remain unclarified for more than a limited time in the later stages of the offer period. Before any statements of this kind are made, the Panel must be consulted as to the period allowable for clarification. This does not detract in any way from the obligation to make timely announcements under Rule 2.~~

~~In the case of a scheme of arrangement, see Section 4 of Appendix 7.~~

~~2.~~ Statements of support

…

[current Rules 19.8 to 19.11 would become new Rules 30.1 to 30.4]

Rule 20

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

…

NOTES ON RULE 20.1

…

3. Meetings

…

The above provisions apply to all such meetings held prior to or during an offer period wherever they take place and even if with only one person or firm, unless the meetings take place by chance. ~~Meetings with employees in their capacity as such (rather than in their capacity as shareholders) are not normally covered by this Note, although the Panel should be consulted if any employees are interested in a significant number of shares.~~

…

6. Sharing information with employee representatives or employees

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

(a) an offeror or the offeree company to their employee representatives or employees; or

(b) an offeror to the employee representatives or employees of the offeree company,

where the employee representatives or employees are acting in their capacity as such (rather than in their capacity as shareholders).

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

20.2 EQUALITY OF INFORMATION TO COMPETING OFFERORS

Any information given to one offeror or potential offeror, whether publicly identified or not~~named or unnamed~~, must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome. This requirement will usually only apply when there has been a public announcement of the existence of the offeror or potential offeror to which information has been given or, if there has been no public announcement, when the offeror or bona fide potential offeror requesting

information under this Rule has been informed authoritatively of the existence of another potential offeror.

Rule 21.2

[current Rule 21.2 and the Notes thereon to be deleted]

21.2 INDUCEMENT FEES AND OTHER OFFER-RELATED ARRANGEMENTS

(a) Except with the consent of the Panel, neither the offeree company nor any person acting in concert with it may enter into any offer-related arrangement with either the offeror or any person acting in concert with it during an offer period or when an offer is reasonably in contemplation.

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

(i) a commitment to maintain the confidentiality of information provided that it does not include any other provisions prohibited by Rules 21.2(a) or 2.3(d) or otherwise under the Code;

(ii) a commitment not to solicit employees, customers or suppliers;

(iii) a commitment to provide information or assistance for the purposes of obtaining any official authorisation or regulatory clearance;

(iv) irrevocable commitments and letters of intent; and

(v) any agreement, arrangement or commitment which imposes obligations only on an offeror or any person acting in concert with it.

(c) If there is any doubt as to whether any proposed agreement, arrangement or commitment is subject to this Rule, the Panel should be consulted at the earliest opportunity.

NOTES ON RULE 21.2

1. A competing offeror

Where an offeror has announced a firm intention to make an offer which was not recommended by the board of the offeree company at the time of that

announcement and this remains the case, the Panel will normally consent to the offeree company entering into an inducement fee arrangement with one competing offeror at the time of the announcement of its firm intention to make a competing offer, provided that:

(a) the value of the inducement fee is de minimis (normally no more than 1% of the value of the offeree company calculated by reference to the price of the competing offer at the time of its announcement under Rule 2.7); and

(b) the inducement fee is payable only if an offer made by a party other than the competing offeror becomes or is declared wholly unconditional.

2. Formal sale process

Where an offer period commences with an announcement by the offeree company that the board of the offeree company is seeking one or more potential offerors by means of a formal sale process, the Panel will normally grant a dispensation from the prohibition in Rule 21.2, such that the offeree company would be permitted, subject to the same provisos as set out in Note 1(a) and (b) above, to enter into an inducement fee arrangement at the conclusion of that process with one offeror (who had participated in that process) at the time of the announcement of its firm intention to make an offer. In exceptional circumstances, the Panel may also be prepared to consent to the offeree company entering into other offer-related arrangements with that offeror. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.

3. "Whitewash" transactions

Rule 21.2 also generally applies in the context of a "whitewash" transaction.

4. Disclosure and display

All relevant details of any offer-related arrangement or other agreement, arrangement or commitment permitted under Rule 21.2 must be fully disclosed in the announcement made under Rule 2.7 and in the offer document or whitewash circular, as well as put on display in accordance with Rule 26.1.

Rule 23

RULE 23. ~~THE~~ GENERAL OBLIGATIONS ~~AS TO INFORMATION~~

23.1 SUFFICIENT INFORMATION

Shareholders must be given …

…

NOTES ON RULE 23.1

…

~~*3. Shareholders and persons with information rights outside the EEA*~~

~~*See the Note on Rule 30.3.*~~

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, 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.

NOTE ON RULE 23.2

Shareholders, persons with information rights, employees and employee representatives outside the EEA

Where local laws or regulations of a particular non-EEA jurisdiction may result in a significant risk of civil, regulatory or, particularly, criminal exposure for the offeror or the offeree company if the information or documentation is sent, published or made available to shareholders in that jurisdiction without any amendment, and unless they can avoid such exposure by making minor amendments to the information being provided or documents being sent, published or made available either:

(a) the offeror or the offeree company need not provide such information or send, publish or make such information or documents available to registered shareholders of the offeree company or persons with information rights who are

located in that jurisdiction if less than 3% of the shares of the offeree company are held by registered shareholders located there at the date on which the information is to be provided or the information or documents are to be sent, published or made available (and there is no need to consult the Panel in these circumstances); or

(b) in all other cases, the Panel may grant a dispensation where it would be proportionate in the circumstances to do so having regard to the cost involved, any resulting delay to the transaction timetable, the number of registered shareholders in the relevant jurisdiction, the number of shares involved and any other factors invoked by the offeror or the offeree company.

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

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

23.3 FINANCIAL ADVISERS' OPINIONS

If any document published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn its consent to the publication of the document with the inclusion of its recommendation or opinion in the form and context in which it is included.

Rule 24

24.1 THE OFFER DOCUMENT

(a) The offeror must, normally within 28 days of the announcement of a firm intention to make an offer, send an offer document to shareholders of the offeree company and persons with information rights, in accordance with Rule 19.8. The Panel must be consulted if the offer document is not to be published within this period.

(b) On the same day, the offeror must:

(i) publish the offer document on a website in accordance with Rule 19.11; and

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

(c) At the same time, both the offeror and the offeree company must make the offer document readily available to their employee representatives or, where there are no employee representatives, to the employees themselves.

24.~~1~~2 INTENTIONS REGARDING THE OFFEREE COMPANY, THE OFFEROR COMPANY AND THEIR EMPLOYEES

(a) ~~An offeror will be required to cover the following points i~~In the offer document, the offeror must state its intentions with regard to the future business of the offeree company and explain the long-term commercial justification for the offer. In addition, it must state:—

~~(a) its intentions regarding the future business of the offeree company;~~

(i) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment;

(~~b~~ii) its strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's places of business;

(~~c~~iii) its intentions ~~regarding~~ with regard to any redeployment of the fixed assets of the offeree company; and

(iv) its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree company.

~~(d) the long-term commercial justification for the proposed offer; and~~

~~(e) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment.~~

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

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

(c) Where the offeror is a company, and insofar as it is affected by the offer, the offeror must also ~~cover~~ state its intentions with regard to its future business and comply with (a)(i), ~~(b)~~ and (~~e~~ii) with regard to itself.

24.3~~2~~ FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER

Except with the consent of the Panel:—

(a) where ~~the consideration includes securities and~~ the offeror is a company incorporated under the Companies Act 2006 (or its predecessors) and its shares are admitted to trading on a UK regulated market ~~the Official List or to trading~~ or on AIM or PLUS, the offer document must contain:

(i) the names of its directors;

(ii) the nature of its business and its financial and trading prospects;

(iii) details of the website address where its audited consolidated accounts for the last two financial years have been published. The accounts will be treated as having been incorporated into the offer document by reference under Rule 24.15;

(iv) details of the website address where any interim statement and/or preliminary announcement made since the date of its last published audited accounts have been published. Any such statement or announcement will be treated as having been incorporated into the offer document by reference under Rule 24.15;

~~(i) for the last 3 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, minority interests, the amount absorbed by dividends and earnings and dividends per share;~~

~~(ii) a statement of the assets and liabilities shown in the last published audited accounts;~~

~~(iii) a cash flow statement if provided in the last published audited accounts;~~

(v~~iv~~) in the case of a securities exchange offer, all known ~~material~~ significant changes in ~~the~~ its financial or trading position ~~of the~~

~~company~~ subsequent to the date of its last published audited accounts or a statement that there are no known ~~material~~ significant changes;

~~(v) details relating to items referred to in (i) above in respect of any interim statement or preliminary announcement made since the last published audited accounts;~~

~~(vi) inflation-adjusted information if any of the above has been published in that form;~~

~~(vii) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures, including those relating to inflation-adjusted information;~~

~~(viii) where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated;~~

~~(ix) the names of the offeror's directors;~~

~~(x) the nature of its business and its financial and trading prospects; and~~

(vi) a statement of the effect of full acceptance of the offer upon its earnings and assets and liabilities; and

(vii~~xi~~) a summary of the principal contents of each material contract … ;

~~(b) where the consideration is cash only and the offeror is a company incorporated under the Companies Act 2006 (or its predecessors) and its shares are admitted to the Official List or to trading on AIM, the offer document must contain:~~

~~(i) for the last two financial years for which information has been published, turnover and profit or loss before taxation;~~

~~(ii) a statement of the net assets of the company shown in the last published audited accounts;~~

~~(iii) the names of the company's directors; and~~

~~(iv) the nature of the business and its financial and trading prospects;~~

(b~~c~~) if the offeror is other than a company referred to in (a) ~~and (b)~~ above, ~~whether the consideration is securities or cash,~~ the offer document must contain:

…

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

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

(i) … **;**

(ii) the date when the document is published, the name and address of the offeror (including, where the offeror is a company, the type of company and the address of its registered office)~~ and, if appropriate, of the person making the offer on behalf of the offeror~~;

(iii) … **(See Note 34);**

(iv) … **;**

(v) the terms of the offer, including the consideration offered for each class of security, the total consideration offered and particulars of the way in which the consideration is to be paid in accordance with Rule 31.8 or, in the case of a scheme of arrangement, Section 10 of Appendix 7;

(vi) all conditions ~~(including normal conditions relating to acceptances, admission to listing, admission to trading and increase of capital)~~ to which the offer is subject;

(vii) particulars of all documents required, and procedures to be followed, for acceptance of the offer or, in the case of a scheme of arrangement, for voting;

(viii) the middle market quotations for the securities to be acquired, and (in the case of a securities exchange offer) securities offered, for the first business day in each of the six months immediately before the date of the offer document, for the last business day before the commencement of the offer period and for the latest available date

before the publication of the offer document, together with the source ~~(quotations stated in respect of securities admitted either to the Official List or to trading on AIM should be taken from the Stock Exchange Daily Official List and,~~ (or if any of the securities are not ~~so~~ admitted to trading, any information available as to the number and price of transactions which have taken place during the preceding six months ~~should be stated~~, together with the source, or an appropriate negative statement);

(ix) … ;

(x) … ;

(xi) … ;

~~(xii) in the case of a securities exchange offer, the effect of full acceptance of the offer upon the offeror's assets, profits and business which may be significant for a proper appraisal of the offer;~~

(xiii) a summary … ;

(xiii~~i~~v) the national law … ;

(xiv) the compensation … ; **~~and~~**

(xv~~i~~) details of any offer-related arrangement ~~for the payment of an inducement fee or similar arrangement as referred to in~~ permitted under Rule 21.2; and

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

(e) the offer document must contain information on the offeree company on the same basis as set out in (a)(i) to (iv~~ix~~) above;

~~(f) all offer documents must contain a description of how the offer is to be financed and the source of the finance. The principal lenders or arrangers of such finance must be named. Where the offeror intends that the payment of interest on, repayment of or security for any liability (contingent or otherwise) will depend to any significant extent on the business of the offeree company, a description of the arrangements contemplated will be required. Where this is not the case, a negative statement to this effect must be made;~~

(f) the offer document must contain a description of how the offer is to be financed and the source(s) of the finance. Details must be provided of the

debt facilities or other instruments entered into in order to finance the offer and to refinance the existing debt or working capital facilities of the offeree company and, in particular:

(i) the amount of each facility or instrument;

(ii) the repayment terms;

(iii) interest rates, including any "step up" or other variation provided for;

(iv) any security provided;

(v) a summary of the key covenants;

(vi) the names of the principal financing banks; and

(vii) if applicable, details of the time by which the offeror will be required to refinance the acquisition facilities and of the consequences of its not doing so by that time; and

(g) … **~~; and~~.**

~~(h) if any document published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn his consent to the publication of the document with the inclusion of his recommendation or opinion in the form and context in which it is included.~~

NOTES ON RULE 24.~~2~~3

…

2. Further information requirements

(a) For the purpose~~s~~ of paragraphs (ii) and (iii) of Rule 24.~~2~~3(b~~c~~), the expression "person" will normally include the ultimate owner(s), and persons having control (as defined), of the offeror if not already included under paragraphs (ii) or (iii). Whilst the precise nature of the further information which may be required to be disclosed under paragraphs (i), (ii) or (iii) of Rule 24.3(b) in any particular case will depend on the circumstances of that case, the Panel would normally expect it to include a general description of the business interests of the offeror and/or other person(s) concerned and details of those assets which the Panel considers may be relevant to the business of the offeree company.

(b) The Panel must be consulted in advance in any case to which Rule 24.2~~2~~3(b~~c~~) applies, or may apply regarding the application of its provisions to that particular case.

~~*3. Partial offers*~~

~~*Where the offer is a partial offer, the offer document must contain the information required under Rule 24.2(a), whether the consideration is securities or cash.*~~

3~~4~~. Persons acting in concert with the offeror

…

4~~5~~. Offers made under Rule 9

…

~~*6. Certain offers where the consideration is solely in cash*~~

~~*The Panel will normally consent to the provisions of Rules 24.2(b), (c)(i) (to the extent that it refers to Rule 24.2(a)) and (f) being disapplied in relation to offers where the consideration is solely in cash provided that the offer (including all related offers and proposals) is structured so that no person will remain or become a minority shareholder in the offeree company, or the risk of anyone doing so is negligible. In such circumstances, the offer document or scheme circular must nonetheless contain the names of the offeror's directors.*~~

~~*If an offer to which this Note applies is subsequently restructured with the effect that:*~~

~~*(a) the consideration is no longer solely in cash; or*~~

~~*(b) the transaction structure switches to a contractual offer where the risk of a person remaining or becoming a minority shareholder in the offeree company is not negligible,*~~

~~*the provisions of Rules 24.2(b), (c)(i) and (f) will apply in full and the information required by those provisions must be included in the supplementary scheme circular or offer document (as appropriate).*~~

~~*Where Rule 24.2(c)(i) applies, compliance with the "further information" requirements of that rule will still be required (see Note 2 on Rule 24.2).*~~

~~*The Panel should be consulted in advance where consent to the disapplication of any of the requirements of Rule 24.2(b), (c)(i) or (f) is sought.*~~

…

[current Rules 24.3 to 24.13 to be renumbered as Rules 24.4 to 24.14]

24.145 INCORPORATION OF INFORMATION BY REFERENCE

~~**(a) The information required to be included in documents under the following Rules may be incorporated into the relevant documents by reference to another source:**~~

~~**(i) Rules 24.2(a)(i) to (iii) and (v) to (viii);**~~

~~**(ii) Rules 24.2(b)(i) and (ii); and**~~

~~**(iii) Rules 24.2(c) and (e), in so far as they refer to Rules 24.2(a)(i) to (iii) and (v) to (viii).**~~

(a) In addition to the requirements under Rules 24.3(a)(iii) and (iv) (and, insofar as they refer to Rules 24.3(a)(iii) and (iv), Rules 24.3(b) and (e)) for certain information to be incorporated into an offer document by reference to a website, iInformation that is required to be included in a document under other Rules may be incorporated by reference to another source with the Panel's consent.

…

24.16 FEES AND EXPENSES

(a) The offer document must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeror in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to:

(i) financial and corporate broking advice;

(ii) financing arrangements;

(iii) legal advice;

(iv) accounting advice;

(v) public relations advice;

(vi) other professional services (including, for example, management consultants, actuaries and specialist valuers); and

(vii) other costs and expenses.

(b) Where a fee is variable between defined limits, a range must be given in respect of the aggregate fees and expenses and of the fees and expenses of each relevant category, setting out the expected maximum and minimum amounts payable. See Note 2.

(c) Where the fees and expenses payable within a particular category are likely materially to exceed the estimated maximum previously disclosed, the offeror must promptly disclose to the Panel revised estimates of the aggregate fees and expenses expected to be incurred in relation to the offer and of the fees and expenses expected to be incurred within that category. The Panel may require the public disclosure of such revised estimates where it considers this to be appropriate.

(d) Where the final fees and expenses actually paid within a particular category materially exceed the amount publicly disclosed as the estimated maximum payable, the offeror must promptly disclose to the Panel the final amount paid in respect of that category. The Panel may require the public disclosure of such final amount where it considers this to be appropriate.

NOTES ON RULE 24.16

1. Financing fees and expenses

Full details should be given of any fees and expenses payable, or estimated to be payable:

(a) when a financing commitment is entered into; and

(b) when the financing is drawn-down.

Any commitment fees should normally be disclosed by means of describing the principal amounts of the financing facilities and the annual percentage rate applicable for the period of time between commitment and drawdown. A cross-reference to the description of how the offer is to be financed, as required under Rule 24.3(f), will normally be sufficient.

2. Variable and uncapped fee arrangements

Where a fee is not subject to a maximum amount, this should be stated and an indication of the nature of the arrangement given (for example, whether the amount of the fee is discretionary, relates directly to the final value of the offer or will be calculated on a "time cost" basis).

Where a particular category of fees and expenses includes a variable or uncapped element, the figure or range given should reflect a reasonable estimate of the fees likely to be paid on the basis of the then current offer.

Where a fee arrangement provides for circumstances in which the fee will or may increase, for example where the offer is revised or a competitive situation arises, the higher amount will not be required to be disclosed unless and until such circumstances arise.

Rule 25

25.1 THE OFFEREE BOARD CIRCULAR

The board of the offeree company must, normally within 14 days of the publication of the offer document, send a circular to the offeree company's shareholders and persons with information rights, in accordance with Rule 19.8 and must, at the same time:

(a) publish the circular on a website in accordance with Rule 19.11;

(b) announce via a RIS that it has been so published; and

(c) make it readily available to its employee representatives or, where there are no employee representatives, to the employees themselves.

NOTE ON RULE 25.1

Where there is no separate offeree board circular

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

25.~~1~~2 VIEWS OF THE BOARD ON THE OFFER, INCLUDING THE OFFEROR'S PLANS FOR THE COMPANY AND ITS EMPLOYEES

~~(a) The board of the offeree company must send its opinion on the offer (including any alternative offers) to the offeree company's shareholders and persons with information rights. It must, at the same time, make known to its shareholders the substance of the advice given to it by the independent advisers appointed pursuant to Rule 3.1.~~

(~~b~~a) The ~~opinion referred to in (a) above~~ offeree board circular must ~~include~~ set out the opinion of the board on the offer (including any

alternative offers) and the board's reasons for forming its opinion and must include ~~the~~ its views ~~of the board of the offeree company~~ on:

(i) the effects of implementation of the offer on all the company's interests, including, specifically, employment; and

(ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business, as set out in the offer document pursuant to Rule 24.~~1~~2~~,~~.

~~and must state the board's reasons for forming its opinion.~~

(b) In addition, the circular must include the substance of the advice given to the board of the offeree company by the independent adviser appointed under Rule 3.1.

~~(c) If any document published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn its consent to the publication of the document with the inclusion of its recommendation or opinion in the form and context in which it is included.~~

NOTES ON RULE 25.~~1~~2

~~1. When a board has effective control~~

~~A board whose shareholdings confer control over a company which is the subject of an offer must carefully examine the reasons behind the advice it gives to shareholders and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.~~

1. Factors which may be taken into account

The provisions of the Code do not limit the factors that the board of the offeree company may take into account in giving its opinion on the offer in accordance with Rule 25.2(a). In particular, when giving its opinion, the board of the offeree company is not required by the Code to consider the offer price as the determining factor and is not precluded by the Code from taking into account any other factors which it considers relevant.

2. ~~Split boards~~ Where there is no clear opinion or there is a divergence of views

If the board of the offeree company ~~is split in its views~~ does not reach a clear opinion on an offer, or if there is a divergence of views among its members, or between the board and the independent adviser appointed under Rule 3.1, this must be stated and an explanation given, 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.

T~~t~~he views of any directors who are in a minority should also be included in the circular. ~~publish their views. The Panel will normally require the offeree company to send those views to the offeree company's shareholders and persons with information rights.~~

3. When a board has effective control

A board whose shareholdings confer control over an offeree company must carefully examine the reasons behind its opinion on the offer and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.

~~3~~4. Conflicts of interest

…

~~4~~5. Management buy-outs

…

25.~~2~~3 FINANCIAL AND OTHER INFORMATION

The ~~first major~~ offeree board circular ~~published by the offeree board in connection with an offer (whether recommending acceptance or rejection of the offer)~~ must contain all known ~~material~~ significant changes in the financial or trading position of the offeree company subsequent to the last published audited accounts or a statement that there are no known ~~material~~ significant changes.

NOTES ON RULE 25.~~2~~3

1. Offeree board circular combined with offer document

Where the ~~first major~~ offeree board circular published by the offeree board is combined with the offer document, it will be the responsibility of the offeree board to include the information required by ~~this~~ Rule 25.3. Accordingly, the offeror will

not be required to comply with Rule 24.~~2~~3(e) insofar as it applies to Rule 24.~~2~~3(a)(v~~iv~~).

2. Offeree board circular published after offer document

Where the offeror has included in the offer document information on the offeree company as required by Rule 24.~~2~~3(e) insofar as it applies to Rule~~s~~ 24.~~2~~3(a)~~(iv) and~~ (v), such information does not need to be repeated in the ~~first major~~ offeree board circular ~~published by the offeree board~~ provided that the statement made in accordance with ~~this~~ Rule 25.3 makes specific reference to the relevant information disclosed by the offeror in the offer document.

25.~~3~~4 INTERESTS AND DEALINGS

(a) The ~~first major~~ offeree board circular ~~published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer)~~ must state:—

…

25.~~4~~5 DIRECTORS' SERVICE CONTRACTS

(a) The ~~first major~~ offeree board circular ~~published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer)~~ must contain …

…

25.~~5~~6 ARRANGEMENTS IN RELATION TO DEALINGS

The ~~first major~~ offeree board circular ~~published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer)~~ must disclose …

…

25.~~6~~7 MATERIAL CONTRACTS, IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT AND DOCUMENTS ON DISPLAY

The ~~first major~~ offeree board circular ~~published by the offeree board in connection with an offer~~ must contain:—

(a) … **; ~~and~~**

(b) … **~~.~~; and**

(c) a list of the documents which the offeree company has published on a website in accordance with Rules 26.1 and 26.2 and the address of the website on which the documents are published.

…

25.8 FEES AND EXPENSES

The offeree board circular must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeree company in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to the matters specified in paragraphs (i) to (vii) of Rule 24.16(a). The other provisions of Rule 24.16 and the Notes on Rule 24.16 will apply as if references to the offeror were references to the offeree company.

25.9 THE EMPLOYEE REPRESENTATIVES' OPINION

The board of the offeree company must append to its circular a separate opinion from its employee representatives on the effects of the offer on employment, provided such opinion is received in good time before publication of that circular. Where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received within 14 days of the offer becoming or being declared wholly unconditional.

NOTES ON RULE 25.9

1. Offeree company's responsibility for costs

The offeree company must pay for the publication of the employee representatives' opinion and for the costs reasonably incurred by the employee representatives in obtaining any advice required for the verification of the information contained in that opinion in order to comply with Rule 19.1. (See also Rule 32.6(b).)

2. Notification of the rights of employee representatives under Rule 25.9

See Rule 2.12(d).

Rule 26

RULE 26. DOCUMENTS TO BE ON DISPLAY

26.1 DOCUMENTS TO BE ON DISPLAY FOLLOWING THE ANNOUNCEMENT OF AN OFFER

Except with the consent of the Panel, copies of the following documents must be published on a website from the time of the announcement of a firm intention to make an offer (or, if later, the date of the document) until the end of the offer (including any related competition reference period):

(a) any irrevocable commitment or letter of intent procured by the offeror or offeree company (as appropriate) or any person acting in concert with it;

(b) any documents relating to the financing of the offer (Rule 24.3(f));

(c) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert; and

(d) any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2.

26.2 DOCUMENTS TO BE ON DISPLAY FOLLOWING THE MAKING OF AN OFFER

Except with the consent of the Panel, copies of the following documents must be ~~made available for inspection and~~ published on a website from the time the offer document or offeree board circular, as appropriate, is published until the end of the offer (~~and~~ including any related competition reference period)~~. The offer document or offeree board circular must state which documents are so available, the place (being a place in the City of London or such other place as the Panel may agree) where inspection can be made and the address of the website on which the documents are published~~:

(a) … ;

~~**(b) audited consolidated accounts of the offeror or the offeree company for the last two financial years for which these have been published;**~~

(b~~c~~) … ;

(c~~d~~) … ;

(d~~e~~) any material contract entered into by an offeror or the offeree company, or any of their respective subsidiaries, in connection with the offer that is described in the offer document or offeree board circular (as

appropriate) in compliance with Rule 24.~~2~~3(a), Rule 24.~~2~~3(b~~c~~) or Rule 25.~~6~~7(a);

(e~~f~~) where a profit forecast has been made:

(i) the reports of the auditors or consultant accountants and of the financial advisers (Rule 28.3); and

(ii) … **;**

(f~~g~~) where an asset valuation has been made:

(i) the valuation certificate and associated report or schedule containing details of the aggregate valuation (Rule 29.5(c)); and

(ii) a letter stating that the valuer has given and not withdrawn his consent to the publication of his name in the relevant document (Rule 29.5(b));

~~(h) any document evidencing an irrevocable commitment or a letter of intent which has been procured by the offeror or offeree company (as appropriate) or any person acting in concert with it;~~

(g~~i~~) … **;**

~~(j) documents relating to the financing arrangements for the offer where such arrangements are described in the offer document in compliance with the third sentence of Rule 24.2(f);~~

(h~~k~~) … **; and**

~~(l) documents relating to the payment of an inducement fee or similar arrangement (Rule 21.2);~~

(i~~m~~) any agreements or arrangements, or, if not reduced to writing, a memorandum of all the terms of such agreements or arrangements, which relate to the circumstances in which the offeror may or may not invoke or seek to invoke a condition to its offer ~~disclosed in the offer document pursuant to~~ (Rule 24.~~2~~3(d)(ix))~~;~~.

~~(n) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert;~~

~~(o) in the case of an offeror, the offer document and any revised offer document (Rules 30.1(a) and 32.1(a)); and~~

~~**(p) in the case of the offeree company, the offeree board circular and any offeree board opinion on any revised offer document (Rules 30.2(a) and 32.6(a)).**~~

NOTES ON RULE 26

…

5. Amendment, variation, ~~or~~ updating or replacement of documents on display

If a document on display is amended, varied, ~~or~~ updated or replaced during the period in which it is required to be on display under Rule 26, then the amended, varied or updated document, or the replacement document, should also be put on display and a statement that this has been done should be included on the website.

Rule 27

27.1 MATERIAL CHANGES

Documents subsequently sent to shareholders of the offeree company and persons with information rights by a party to the offer must contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period; if there have been no such changes, this must be stated. In particular, the following matters must be updated:—

(a) changes or additions to, or the replacement of, material contracts, irrevocable commitments or letters of intent or financing arrangements (Rules 24.2~~2~~3(a), (b~~c~~), ~~and~~ (d)(x) and (f) and 25.6~~7~~(a) and (b));

(b) any known ~~material~~ significant changes in the financial or trading position (Rules 24.2~~2~~3(a)(~~iv~~v) and 25.2~~2~~3);

…

Rule 30

~~SECTION M: TIMING AND REVISION~~
SECTION M: DISTRIBUTION OF DOCUMENTATION DURING AN OFFER

RULE 30~~. PUBLISHING THE OFFER DOCUMENT AND THE OFFEREE BOARD CIRCULAR~~

[Rules 30.1 to 30.3 to be deleted and current Rules 19.8 to 19.11 to be inserted as new Rules 30.1 to 30.4]

30.1 PUBLICATION OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION

…

30.2 RIGHT TO RECEIVE COPIES OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION IN HARD COPY FORM

…

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

…

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

…

Rule 31

SECTION N: OFFER TIMETABLE AND REVISION

RULE 31. TIMING OF THE OFFER*

…

31.5 NO EXTENSION STATEMENTS

…

NOTES ON RULE 31.5

…

3. Competitive situations

…

(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 ~~named~~ publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)

Rule 32

32.1 ~~OFFER OPEN FOR 14 DAYS AFTER~~ 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 ~~of publication~~, the offeror must: ~~put the revised offer document on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been published and where the document can be inspected~~

(i) publish the offer document on a website in accordance with Rule 19.11; and

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

(b) At the same time, both the offeror and the offeree company must make the revised offer document readily available to their employee representatives or, where there are no employee representatives, to the employees themselves. The offeree company must also inform its employee representatives or employees of the right of employee representatives under Rule 32.6 to have a separate opinion on the revised offer appended to any offeree board circular published in relation to the revised offer.

(~~b~~c) …

32.2 NO INCREASE STATEMENTS

…

NOTES ON RULE 32.2

…

3. Competitive situations

…

(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 ~~named~~ publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)

…

32.6 THE OFFEREE BOARD'S OPINION AND THE EMPLOYEE REPRESENTATIVES' OPINION

(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 ~~under~~ as required by Rule 25.1~~(a)~~, 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 19.11;

(ii) announce via a RIS that the circular has been published; and

(iii) make it readily and promptly available to its employee representatives or, where there are no employee representatives, to the employees themselves.

~~On the day of publication, the offeree company must put the circular on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been published and where the document can be inspected.~~

(b) The board of the offeree company must append to ~~the~~ its circular ~~containing its opinion on a revised offer~~ a separate opinion from ~~the~~ its employee representatives ~~of its employees~~ on the effects of the revised offer on employment, provided such opinion is received in good time before publication of that circular. Where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received within 14 days of the offer becoming or being declared wholly unconditional.

NOTE ON RULE 32.6

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

See Note 1 on Rule 25.9.

[Rule 32.7 to be deleted]

Rule 35

35.1 DELAY OF 12 MONTHS

…

NOTE ON RULES 35.1 and 35.2

When ~~dispensations~~ consent may be given ~~granted~~

(a) The Panel will normally only ~~grant~~ give its consent under this Rule if ~~when~~:

(i) the new offer is recommended by the board of the offeree company. Such consent will not normally be granted within ~~3~~ three months of the lapsing of an earlier offer in circumstances where the offeror was prevented from revising or extending its previous offer as a result of a no increase statement or a no extension statement; ~~or~~

(ii) the new offer follows the announcement by a third party of ~~an~~ a firm intention to make an offer ~~by a third party~~ for the offeree company; ~~or~~

(iii) the new offer follows the announcement by the offeree company of a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or of a reverse takeover (see Note 2 on Rule 3.2) which has not failed or lapsed or been withdrawn~~.~~; or

(iv) there has been any other material change of circumstances.

Appendix 1

APPENDIX 1

WHITEWASH GUIDANCE NOTE

…

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:—

…

(h) Rule 21.2 (~~inducement fees~~permitted offer-related arrangements);

…

Appendix 7

APPENDIX 7

SCHEMES OF ARRANGEMENT

DEFINITIONS AND INTERPRETATION

Long-stop date

The date stated in the scheme circular to be the latest date by which the scheme must become effective and included as such in the terms of the scheme.

…

~~**3 DATE OF SHAREHOLDER MEETINGS**~~

~~**The shareholder meetings must normally be convened for a date which is at least 21 days after the date of the scheme circular.**~~

3 EXPECTED SCHEME TIMETABLE

(a) Where an offeror announces a firm intention to make an offer which is to be implemented by means of a scheme of arrangement and the board of the offeree company agrees to the inclusion of a statement of its intention to recommend the scheme in that announcement then the offeree company must, except with the consent of the Panel, ensure that the scheme circular is sent to shareholders and persons with information rights within 28 days of that announcement. If the offeree company board subsequently withdraws its recommendation, this obligation will cease.

(b) The offeree company must ensure that the scheme circular sets out the expected timetable for the scheme, including the expected dates and times for the following:

(i) the record date for any shareholder meeting;

(ii) the latest date and time for the lodging of forms of proxy or elections for any alternative form of consideration;

(iii) the date and time of any shareholder meetings, which must normally be convened for a date which is at least 21 days after the date of the scheme circular;

(iv) the date and time of any meetings of the shareholders of the offeror to be convened in connection with the offer;

(v) the date of the court sanction hearing;

(vi) the record date for the purposes of the scheme and/or any reduction of capital provided for by the scheme;

(vii) the date and time of any proposed suspension in trading of shares or other securities of the offeree company;

(xiii) the date of any court hearing to confirm any reduction of capital provided for by the scheme;

(ix) the effective date;

(x) the date and time of the admission to trading of any offeror securities to be issued in connection with the scheme; and

(xi) the long-stop date.

(c) Upon publication of the scheme circular, the offeree company must announce in accordance with Rule 2.9 that the scheme circular has been published and include in that announcement the expected timetable, including the expected dates and times referred to in paragraph (b) above.

(d) The offeree company must implement the scheme in accordance with the expected timetable, as published, unless:

(i) the board of the offeree company withdraws its recommendation of the scheme;

(ii) the board of the offeree company announces, in accordance with Section 6(a) below, its decision to propose an adjournment of a shareholder meeting or court sanction hearing; or

(iii) a shareholder meeting or the court sanction hearing is adjourned.

See also Note 2 on Section 8 below.

(e) If, following one of the events set out in paragraph (d) above, the board of the offeree company wishes to announce a new timetable, the offeree company must first obtain the approval of the offeror to that new timetable and must then promptly announce that new timetable. Following such an announcement, the offeree company must implement the scheme in accordance with the new timetable, unless any of the exceptions referred to in paragraph (d) apply.

4 HOLDING STATEMENTS

(a) If ~~a statement~~ an announcement of the kind described in Rule 2.6(d) ~~Note 1 on Rule 19.3~~ is made during an offer period involving a scheme of arrangement, the Panel will normally require the ~~statement to be clarified~~ potential offeror to clarify its position by a date~~, to be specified by the Panel,~~ in advance of the date of the shareholder meetings, to be announced by the Panel.

…

8 SWITCHING

…

NOTES ON SECTION 8

1. Determination of the offer timetable following a switch

…

2. Consequences of a withdrawal of recommendation etc.

Where:

(a) the board of the offeree company withdraws its recommendation;

(b) the board of the offeree company announces, in accordance with Section 6(a) above, its decision to propose an adjournment to a shareholder meeting or the court sanction hearing;

(c) any shareholder meeting or the court sanction hearing is adjourned; or

(d) the Panel considers that the offeree company has not implemented the scheme in accordance with the published timetable,

the Panel will normally consent to a request from the offeror to switch to a contractual offer with an acceptance condition set at up to 90% of the shares to which the offer relates.

…

14 INCORPORATION OF OBLIGATIONS AND RIGHTS

In addition to the relevant requirements of Rules 24 and 25, the scheme circular must incorporate language which appropriately reflects those parts of Rule 13.5(a) and 13.6 (if applicable) and of this Appendix 7 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of offeree companies.

15~~14~~ PROVISIONS DISAPPLIED IN A SCHEME

…

APPENDIX B

List of questions

Q1 **Do you have any comments on the proposed new Rule 2.4 and the proposed new Note 3 on Rule 2.2?**

Q2 **Do you have any comments on the proposed new Rule 2.6(a)?**

Q3 **Do you have any comments on the possible alternative approach to the identification of potential offerors?**

Q4 **Do you have any comments on the proposed new Rules 2.6(b), (d) and (e) and Rule 2.3(d)?**

Q5 **Do you have any comments on the proposed new Note 2 on Rule 2.6?**

Q6 **Do you have any comments on the proposed new Rule 2.6(c) and Note 1 on Rule 2.6?**

Q7 **Do you have any comments on the proposed amendments to Rule 2.8 and to the Note on Rules 35.1 and 35.2?**

Q8 **Do you have any comments on the proposed framework to be applied in circumstances where, following a requirement to make an offer being triggered under Rule 2.2(c) or (d), a potential offeror ceases actively to consider making an offer, or on the proposed new Note 4 on Rule 2.2?**

Q9 **Do you have any comments on the proposed new Rule 21.2?**

Q10 **Do you have any comments on the proposed new Note 1 on Rule 21.2?**

Q11 **Do you have any comments on the proposed new Note 2 on Rule 21.2?**

Q12 **Do you have any comments on the proposed new Note 3 on Rule 21.2?**

Q13 **Do you have any comments on the proposed new Note 4 on Rule 21.2?**

Q14 **Do you have any comments on the proposed amendments to Appendix 7?**

Q15 **Do you have any comments on the proposed new Note 1 on Rule 25.2 or the related amendments?**

Q16 **Do you have any comments on the proposed new Rules 24.16(a) and 25.8?**

Q17 **Do you have any comments on the proposed new Note 1 on Rule 24.16?**

Q18 Do you have any comments on the proposed new Rule 24.16(b) and Note 2 on Rule 24.16?

Q19 Do you have any comments on the proposed new Rules 24.16(c) and (d)?

Q20 Do you have any comments on the proposed deletion of Rule 24.2(b) and Note 6 on Rule 24.2 and the related amendments?

Q21 Do you have any comments on the proposed new Rule 24.3(a) and the related amendments?

Q22 Do you have any comments on the decision not to require *pro forma* balance sheets to be included in offer documents?

Q23 Do you have any comments on the proposed new Rule 24.3(c) regarding the disclosure of ratings and outlooks?

Q24 Do you have any comments on the proposed new Rule 24.3(f)?

Q25 Do you have any comments on the proposed new Rules 26.1 and 26.2 or the related amendments?

Q26 Do you have any comments on the proposed new Rule 24.2?

Q27 Do you have any comments on the proposed new Note 3 on Rule 19.1?

Q28 Do you have any comments on the proposed new structure for the obligations in relation to the publication, content and display of documents?

Q29 Do you have any comments on the proposed new definition of "employee representative"?

Q30 Do you have any comments on the proposed new Note 6 on Rule 20.1?

Q31 Do you have any comments on the proposed new Rules 2.12(a) and (d) and second sentence of Rule 32.1(b)?

Q32 Do you have any comments on the proposed new Rule 25.9 and amendments to Rule 32.6?

Q33 Do you have any comments on the proposed new Rule 19.2(a)(iii)?

Q34 Do you agree that the suggested amendments to section 2(a) of the Introduction to the Code would be consistent with the amendments to the Code proposed in this PCP?

Q35 Do you have any comments on the proposed new definition of "offer period"?

Q36 Do you have any comments on the proposed new Rule 13.4?