

RS 2022/4 4 April 2023

THE TAKEOVER PANEL

MISCELLANEOUS CODE AMENDMENTS

RESPONSE STATEMENT BY THE CODE COMMITTEE



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1. Introduction and summary

(a) Introduction

1.1 On 19 October 2022, the Code Committee of the Takeover Panel (the “**Code Committee**”) published a [Public Consultation Paper](#) (“**PCP 2022/4**” or the “**PCP**”) which proposed amendments to various provisions of the [Takeover Code](#) (the “**Code**”), as summarised below.

(b) Summary of proposals

(i) Derogations and waivers from the requirements of the Code

Section 2 of the PCP proposed to amend:

- (a) **section 2(c) of the Introduction** to the Code, in order to provide the Panel with greater flexibility to grant a derogation or waiver from the requirements of the Code in exceptional circumstances, for example, to facilitate a rescue of a company which is in serious financial difficulty; and
- (b) **Note 3 of the Notes on Dispensations from Rule 9**, in order to remove certain limitations on the Panel’s flexibility to waive the requirements of **Rule 9** in the case of a rescue operation to save a company which is in serious financial difficulty.

(ii) *Where rumour and speculation or an untoward share price movement is caused by a clear public statement*

1.3 **Section 3** of the PCP proposed the deletion of **Note 2 on Rule 2.2**, which provides that a potential offeror which is actively considering an offer for an offeree company, but has not yet made an approach to the offeree company, will not normally be required to make an announcement under **Rule 2.2(d)** if the Panel is satisfied that rumour or speculation, or an untoward movement in the share price of the offeree company, results only from a clear and unequivocal public statement.

(iii) *Adjusted mandatory offer price under Note 3 on Rule 9.5*

1.4 **Section 4** of the PCP proposed to amend **Note 3 on Rule 9.5** to provide that:

- (a) the price payable by an offeror when the mandatory offer price is adjusted under **Rule 9.5(c)** must be “appropriate” rather than “fair and reasonable”; and
- (b) a decision by the Panel to adjust the price of a mandatory offer must be “made public” rather than published by the Panel itself.

- (iv) *Offeree board recommendations and disclosure of directors' intentions in respect of their own shares*

1.5 **Section 5** of the PCP proposed:

- (a) amendments to **Rule 25.2** and **Rule 15.2** to require the board of the offeree company to make a recommendation to shareholders and to holders of convertible securities, options and subscription rights as to the action that they should take in respect of, respectively, an offer (including any alternative offers) or an offer or proposal made under **Rule 15**;
- (b) amendments to **Rule 25.4(a)(v)** to:
- (i) require that, where there are alternative offers, the offeree board circular must state which alternative (if any) the directors intend to elect for in respect of their own shares; and
- (ii) specify that the Panel may require the offeree board circular to state the directors' reasons for electing for a particular alternative; and
- (c) certain minor and consequential amendments to the Code, including the deletion of three Notes on **Rule 3.1**, **Rule 3.3** and **Rule 25.2**, on the basis that they are no longer required.

- (v) *Irrevocable commitments and letters of intent*

1.6 **Section 6** of the PCP proposed that, if a party to an offer or any person acting in concert with it procures an irrevocable commitment or letter of intent before the announcement of a firm intention to make an offer, that party should be required to publish the irrevocable commitment or letter of intent on a website by the current deadline for announcing details of the irrevocable commitment or letter of intent (rather than only following the announcement of a firm intention to make an offer).

(c) **Responses to consultation**

1.7 The consultation period in relation to PCP 2022/4 ended on 13 January 2023. Responses were received from the five respondents listed in **Appendix A** and their responses have been published on the Panel's [website](#). The Code Committee thanks the respondents for their comments.

1.8 The respondents were generally supportive of the proposals. The principal comments and suggestions made by respondents are summarised in **Sections 2 to 6** below.

(d) The Code Committee's conclusions

1.9 Having considered the responses to the consultation, the Code Committee has adopted the amendments proposed in the PCP, subject to the modifications described in **Section 5** below with regard to the proposed amendments relating to offeree board recommendations.

(e) Code amendments

1.10 The amendments to the Code which the Code Committee has adopted as a result of the consultation are set out in **Part 1 of Appendix B**.

1.11 Where new or amended provisions of the Code are set out in the main body of this Response Statement, they are marked to show changes from the provisions as they were proposed to be amended in the PCP.

1.12 In addition, in order to assist with the preparation of a digital version of the Code, the Code Committee has made certain formatting amendments as explained in **Section 7** below. The related Code amendments are set out in **Part 2 of Appendix B**.

1.13 In **Appendix B**, underlining indicates new text and striking-through indicates deleted text, as compared with the current provisions of the Code.

(f) Example recommendation language

1.14 Examples of language which an offeree board could use in giving its recommendation under the new **Rule 25.2(c)** (as discussed in **Section 5** below) are set out in **Appendix C**.

(g) Implementation

1.15 The amendments to the Code set out in this Response Statement will take effect on Monday, 22 May 2023 (the "**implementation date**").

1.16 The Code, as amended, will be applied from the implementation date to all companies and transactions to which it relates, including those on-going transactions which straddle that date, except where to do so would give the amendments retroactive effect.

1.17 Where parties have doubts as to the consequences of the amendments to the Code set out in this Response Statement, in particular the impact on any transaction which is in existence or contemplation, they should consult the Panel prior to the implementation date to obtain a ruling or guidance.

2. Derogations and waivers from the requirements of the Code

- Q1** Should section 2(c) of the Introduction to the Code be amended to provide greater flexibility for the Panel to grant a dispensation from a requirement of the Code in order to facilitate the rescue of a company which is in serious financial difficulty and in other exceptional circumstances?
- Q2** Should Note 3 of the Notes on Dispensations from Rule 9 be amended as proposed to remove the limitations on the Panel's flexibility to waive the requirement for a mandatory offer where an urgent rescue operation is the only way to save a company in serious financial difficulty?

(a) Summary of proposals

2.1 Section 2 of the PCP proposed amendments to:

- (a) **section 2(c) of the Introduction** to the Code, in order to provide the Panel with greater flexibility to grant a derogation or waiver from the requirements of the Code in exceptional circumstances, for example, to facilitate a rescue of a company which is in serious financial difficulty; and
- (b) **Note 3 of the Notes on Dispensations from Rule 9**, in order to remove certain limitations on the Panel's flexibility to waive the requirements of **Rule 9** in the case of a rescue operation to save a company which is in serious financial difficulty.

(b) Respondents' comments

2.2 All of the respondents supported, or did not object to, the proposals.

2.3 One respondent said that it understood the rationale for the proposed amendments but queried whether there was strong evidence to demonstrate that the existing provisions of the Code would not, in practice, allow the Panel to grant a dispensation from a requirement of the Code in order to facilitate the rescue of a company which is in serious financial difficulty.

(c) Code Committee's response

2.4 While the Code Committee believes that the current provisions of the Code will normally give the Panel the flexibility to grant a relevant derogation or waiver, and the Panel has in practice been able to do so whilst respecting the General Principles, there is a risk that the Panel will not always consider itself able to do so. Having identified that risk, the Code Committee considers it important to amend the Code as proposed in order to ensure that, in exceptional circumstances, most obviously where a company is in serious financial difficulty, the Panel can grant a derogation or waiver even if this might result in one or more of the General Principles not being respected. The Code Committee

reiterates that the ability to grant such a derogation or waiver will apply only in exceptional circumstances.

(d) Code amendments

2.5 In the light of the above, the Code Committee has:

- (a) amended **section 2(c) of the Introduction** to the Code, as proposed in paragraph 2.26 of the PCP;
- (b) amended the first paragraph of **Note 3 of the Notes on Dispensations from Rule 9**, as proposed in paragraph 2.28 of the PCP; and
- (c) deleted the second paragraph of **Note 3 of the Notes on Dispensations from Rule 9**, as proposed in paragraph 2.31 of the PCP,

as set out in **Part 1 of Appendix B**.

3. **Where rumour and speculation or an untoward share price movement is caused by a clear public statement**

Q3 Should Note 2 on Rule 2.2 be deleted as proposed?

(a) Summary of proposals

3.1 **Section 3** of the PCP proposed the deletion of **Note 2 on Rule 2.2**, which provides that a potential offeror which is actively considering an offer for an offeree company, but has not yet made an approach to the offeree company, will not normally be required to make an announcement under **Rule 2.2(d)** if the Panel is satisfied that rumour or speculation, or an untoward movement in the share price of the offeree company, results only from a clear and unequivocal public statement. Such a public statement could be, for example, a disclosure of the acquisition of shares required by the FCA Handbook, an announcement of a dawn raid or an intention to purchase, or an announcement of a tender offer.

(b) Respondents' comments

3.2 All of the respondents supported, or did not object to, the proposal.

3.3 One of the respondents who supported the proposal sought confirmation that:

(a) the deletion of **Note 2 on Rule 2.2** would not result in an announcement being required in circumstances where a purchaser of shares is not actively considering a possible offer; and

(b) a potential offeror that had been in active consideration of a possible offer but, following rumour or speculation or an untoward movement in the offeree company's share price, had ceased active consideration, would be able to seek a dispensation from the requirement to make an announcement under **Note 4 on Rule 2.2**.

(c) Code Committee's response

3.4 The Code Committee notes that **Rule 2.2(d)** applies only after a potential offeror first actively considers an offer but before it has made an approach to the board of the offeree company. Accordingly, the deletion of **Note 2 on Rule 2.2** (which relates only to the question of whether an announcement is required under **Rule 2.2(d)**) will not result in an announcement being required in circumstances where a person purchases shares in a company at a time when it is not actively considering an offer for that company.

3.5 The Code Committee confirms that a potential offeror that was actively considering making an offer for a company at the time of the rumour, speculation or untoward movement in share price, but ceased such active consideration following the rumour, speculation or untoward movement in share price, would be able to seek a dispensation under **Note 4 on Rule 2.2** (which will become **Note 3 on Rule 2.2**), although whether the Panel would grant such a dispensation will depend on the circumstances. The Code Committee notes that Section 6 of [Practice Statement No 20](#) includes guidance from the Panel Executive (the “**Executive**”) which may be relevant in such circumstances.

(d) Code amendments

3.6 In the light of the above, the Code Committee has:

- (a) deleted **Note 2 on Rule 2.2**; and
- (b) renumbered **Notes 3 and 4 on Rule 2.2** as **Notes 2 and 3 on Rule 2.2**,

as proposed in paragraph 3.11 of the PCP and as set out in **Part 1 of Appendix B**.

4. Adjusted mandatory offer price under Note 3 on Rule 9.5

Q4 Should Note 3 on Rule 9.5 be amended as proposed so as to require an adjusted mandatory offer price to be “appropriate”?

Q5 Should Note 3 on Rule 9.5 be amended as proposed in relation to the publication of a decision to adjust the mandatory offer price?

(a) Summary of proposals

4.1 **Section 4** of the PCP proposed to amend **Note 3 on Rule 9.5** to provide that:

- (a) the price payable by an offeror when the mandatory offer price is adjusted under **Rule 9.5(c)** must be “appropriate” rather than “fair and reasonable”; and
- (b) a decision by the Panel to adjust the price of a mandatory offer must be “made public” rather than published by the Panel itself.

(b) Respondents’ comments

4.2 All of the respondents supported, or did not object to, the proposal.

4.3 One respondent sought clarification as to the timing of the publication of any decision by the Panel to adjust the price of a mandatory offer.

(c) Code Committee’s response

4.4 As noted in paragraph 4.9 of the PCP, current practice is that any decision to adjust the price of a mandatory offer is typically explained by the offeror in the firm offer announcement and the offer document, rather than published by the Panel. The amendment to the final paragraph of **Note 3 on Rule 9.5** reflects this practice.

4.5 An offeror should consult the Panel as to the timing of the publication of any decision to adjust the mandatory offer price. In most cases, a decision is likely to be made prior to the offeror triggering an obligation to make a mandatory offer, in which case it is likely that the decision will first be made public in the announcement of that offer.

(d) Code amendments

4.6 In the light of the above, the Code Committee has amended **Note 3 on Rule 9.5** as proposed in paragraph 4.10 of the PCP and as set out in **Part 1 of Appendix B**.

5. Offeree board recommendations and disclosure of directors' intentions in respect of their own shares

Q6 Should there be a requirement for the board of the offeree company to make a recommendation to shareholders and to holders of Rule 15 securities as to the action that they should take in respect of an offer (including any alternative offers) or a Rule 15 offer or proposal? Do you have any comments on the proposed amendments to Rule 25.2 and Rule 15.2 and the related provisions of the Code?

(a) Requirement for the offeree board circular to include a recommendation from the board as to the action that shareholders should take, including in respect of any alternative offers

(i) Summary of proposals

5.1 **Section 5(c)** of the PCP proposed the introduction of a new **Rule 25.2(c)** to require an offeree board circular to include not only the board's opinion on the offer (as already required by **Rule 25.2(a)**) but also a recommendation from the board as to the action that shareholders should take in respect of the offer (including any alternative offers).

(ii) Respondents' comments

5.2 One respondent considered that the Code should recognise that it may not be possible for the offeree board to recommend a course of action in relation to both the main offer and any alternative offer.

5.3 One respondent considered that it would be challenging for the board of an offeree company to make the recommendation required by the proposed new **Rule 25.2(c)**, given that the board would not have full details of the offeror's intentions and business plan.

5.4 One respondent, who broadly agreed with the proposals, was concerned that the requirement for the board to make recommendations on alternative offers, as opposed to the offer as a whole, could expose the directors to unintended liability, given that different shareholders would need to take different factors into account when making a choice between the alternative offers. The respondent suggested that one alternative would be to require the board to provide:

(a) an opinion and recommendation on the offer as a whole; and

(b) a commentary on any alternative forms of consideration.

5.5 One respondent queried whether it was necessary to amend the rules in this area and the utility of requiring a recommendation to be given by the offeree board in relation to

an alternative offer. The respondent considered that, where an offer is made in cash with listed securities as alternative consideration, it is common for the board not to give a recommendation in relation to the securities alternative, or to frame its opinion by reference to shareholders' individual circumstances or the relative value of the two alternatives (setting out the advantages and disadvantages of the securities alternative).

- 5.6 The same respondent requested that the Panel provide examples of language which offeree boards could use in giving recommendations to shareholders.
- 5.7 In addition, the respondent sought confirmation that the requirement for a board to include a recommendation as to the action that shareholders should take would not apply to a "mix and match" election, i.e. an arrangement whereby, under the terms of a single offer comprising a combination of cash and securities consideration, shareholders may elect to vary the proportions in which they receive the different forms of consideration (subject to the elections of other shareholders).

(iii) The Code Committee's response

- 5.8 The Code Committee considers that, as stated in paragraph 5.14 of the PCP and in line with the practice of the Executive, it is important that shareholders should be provided with a recommendation from the board of the offeree company as to what action they should take in respect of an offer, including in respect of any alternative offer(s), as required by the proposed new **Rule 25.2(c)**. The directors of a company are the persons best placed to evaluate the merits and demerits of an offer and the board's recommendation will be important information for shareholders in making their acceptance decision.
- 5.9 Where a main offer and one or more alternative offers are made, the position in respect of each offer is no different from the position where there is only a single offer, i.e. the board will need to consider and set out in the offeree board circular whether in its opinion each of the main offer and the alternative offer(s) can be recommended to shareholders. In addition, the offeree board circular must include the substance of the advice from the independent adviser appointed under **Rule 3.1** as to the financial terms of each of the main offer and the alternative offer(s).
- 5.10 If:
- (a) more than one of the offers are recommendable; but
 - (b) the appropriate action for individual shareholders to take may depend on various factors and their particular circumstances, such as their tax position,

the Code Committee recognises that it may not be possible for the offeree board to make a single recommendation to all shareholders as to the action that they should take. In such circumstances, the Code Committee considers that the board should be able to satisfy the requirement in the new **Rule 25.2(c)** by including the statements in paragraphs (a) and (b) above and explaining the key factors which it considers that shareholders should take into account in making their decision as to what action to take (recognising that any such list of key factors is unlikely to be exhaustive).

5.11 In order to make this clear, the Code Committee has introduced a new **Note 3 on Rule 25.2**, as set out in paragraph 5.14(b) below.

5.12 In addition, at the request of the Code Committee (following the suggestion of the respondent referred to in paragraph 5.6), the Executive has prepared four examples of language which an offeree board could use in order to comply with the requirements of the Code in giving its recommendation to shareholders under the new **Rule 25.2(c)**, as set out in **Appendix C**. These examples (which are neither definitive nor exhaustive) address the following situations:

- (a) a single, recommended offer;
- (b) a main offer and an alternative offer, both of which are recommendable;
- (c) a main offer which is recommended and an alternative offer which is not recommendable; and
- (d) a main offer which is recommended and an alternative offer on which the offeree board and the Rule 3 adviser are unable to form an opinion.

5.13 With regard to the confirmation sought by the respondent referred to in paragraph 5.7, the Code Committee agrees that, as stated in **Rule 33.2**, an ability for shareholders to make a mix and match election is not regarded as an alternative offer and the new **Rule 25.2(c)** will not, therefore, apply to such an election.

(iv) *Code amendments*

5.14 In the light of the above, the Code Committee has:

- (a) introduced the new **Rule 25.2(c)** as proposed in paragraph 5.15(a) of the PCP, subject to the minor amendments to **Rule 25.2** set out below. The amended **Rule 25.2** will therefore provide as follows:

**“25.2 OPINION OF THE OFFEREE BOARD ON THE OFFER, INCLUDING
VIEWS ON THE OFFEROR’S PLANS FOR THE COMPANY AND ITS
EMPLOYEES**

(a) —The offeree board circular must:

(a) 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 its views 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 24.2;

(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 in relation to the financial terms of the offer (including any alternative offer); and

(c) ~~The circular must also include a recommendation from the board of the offeree company as to the action that shareholders should take in respect of the offer (including any alternative offers). (See also Note 2 and Note 3.);~~

(b) introduced a new **Note 3 on Rule 25.2**, as referred to in paragraph 5.11 above, as follows:

3. Alternative offers

Where there are alternative offers and:

(a) more than one of the offers can, in the board’s opinion, be recommended to shareholders; but

(b) the appropriate action for individual shareholders to take will depend on various factors and their particular circumstances,

the board may satisfy the requirement in Rule 25.2(c) by including statements to that effect and explaining the key factors which it considers that shareholders should take into account in making their decision as to what action to take.”; and

(c) made a minor amendment to each of **Rule 3.1** and **Note 3 on Rule 3.1** (which will be renumbered as **Note 2**), as set out in **Part 1 of Appendix B**.

(b) **Requirement for the board to provide a recommendation to holders of Rule 15 securities**

(i) *Summary of proposals*

5.15 **Section 5(c)** of the PCP also proposed the introduction of a new **Rule 15.2(b)** to require that, where an offer or proposal (a “**Rule 15 offer or proposal**”) is made to holders of convertible securities, options or subscription rights (“**Rule 15 securities**”), the board should make known to the holders of the Rule 15 securities not only its views (or opinion) on the Rule 15 offer or proposal (as already required by **Rule 15.2**) but also a

recommendation as to the action that the holders of the Rule 15 securities should take in respect of any Rule 15 offer or proposal.

(ii) *Respondents' comments*

5.16 The issues raised by respondents in relation to the proposed new **Rule 15.2(b)** were similar to those raised in relation to the proposed new **Rule 25.2(c)**.

5.17 One respondent considered that the proposed amendments were a codification of existing best practice in relation to Rule 15 offers or proposals. The respondent noted that, where the Rule 15 securities are options, various courses of action may be made available to option holders, including:

- (a) exercising the options and accepting the main offer or participating in the scheme;
- (b) rolling over into new options over the offeror's securities; or
- (c) accepting cash in return for the cancellation of the options.

The respondent went on to state that:

"An offeree board can and does make recommendations as regards an offer, any alternative offer and proposals. Where there is more than one offer or proposal made, the offeree board need not recommend one course of action over another, so long as all proposals or offers are "recommendable"."

5.18 Another respondent noted that, while offeree boards do provide a recommendation in relation to a Rule 15 offer or proposal where possible, various factors, such as the tax positions of individual holders of Rule 15 securities, can make this more difficult in certain circumstances. The respondent considered that a requirement to give a recommendation on a Rule 15 offer or proposal could give rise to a risk that the board would be expressing an opinion on facts and circumstances which it was not well placed to assess.

5.19 The same respondent queried the proposed requirement for the offeree board to provide an opinion on each Rule 15 offer or proposal and suggested that the board should be permitted to confirm with respect to each type of Rule 15 security whether the Rule 15 offer or proposal was fair and reasonable in the context of the main offer, i.e. whether at least one of the possible courses of action would allow the holder of Rule 15 securities to realise "see through" value for their Rule 15 securities.

(iii) *The Code Committee's response*

5.20 The Code Committee continues to believe that it is important that holders of Rule 15 securities are provided with a recommendation from the offeree board as to the action that they should take in respect of any Rule 15 offer or proposal.

5.21 However, the Code Committee recognises that there may circumstances where:

- (a) more than one of the possible courses of action are, in the offeree board's opinion, recommendable; but
- (b) the action which an individual holder of Rule 15 securities should take will depend on various factors and their particular circumstances.

In such circumstances, the Code Committee considers that the board may satisfy the requirement in the new **Rule 15.2(b)** by including the statements in paragraphs (a) and (b) above and explaining the key factors which it considers that the holders of Rule 15 securities should take into account in making their decision as to what action to take (recognising that any such list of key factors is unlikely to be exhaustive).

5.22 In order to make this clear, the Code Committee has introduced a new **Note 3 on Rule 15**, as set out in paragraph 5.24(b) below.

5.23 The Code Committee notes that where holders of Rule 15 securities choose to exercise their conversion, option or subscription rights and become shareholders in the offeree company, they may be faced with a second choice as to what action they should take in their capacity as shareholders (for example, if there are alternative offers). In such circumstances, the Code Committee considers that the board of the offeree company should draw to the attention of the holders of the Rule 15 securities its opinion and recommendation as set out in the offeree board circular.

(iv) *Code amendments*

5.24 In the light of the above, the Code Committee has:

- (a) amended **Rule 15.2** as proposed in paragraph 5.15(b) of the PCP, subject to minor drafting changes. The amended **Rule 15.2** will therefore provide as follows:

"15.2 INDEPENDENT ADVICE AND OPINION OF THE OFFEREE BOARD

(a) The board of the offeree company must obtain competent independent advice on ~~any each~~ offer or proposal and the substance of such advice must be made known to the holders of the Rule 15 securities.

(b) In addition, the board's opinion on ~~any each~~ offer or proposal should be made known to the holders of the Rule 15 securities, together with a

recommendation as to the action that they should take in respect of it. (See also Note 3.)"; and

- (b) introduced a new **Note 3 on Rule 15**, as referred to in paragraph 5.22 above, as follows:

3. Where there are different possible courses of action

Where:

(a) holders of Rule 15 securities have a choice of different possible courses of action, more than one of which can, in the board's opinion, be recommended; but

(b) the appropriate action for individual holders of Rule 15 securities to take will depend on various factors and their particular circumstances.

the board may satisfy the requirement in Rule 15.2(b) by including statements to that effect and explaining the key factors which it considers that the holders of the Rule 15 securities should take into account in making their decision as to what action to take.

(c) Where there is no clear opinion and/or recommendation

(i) Summary of proposals

5.25 **Section 5(d)** of the PCP proposed certain minor amendments to **Note 2 on Rule 25.2** in relation to circumstances where the board does not have a clear opinion and/or recommendation or where there is a divergence of views.

5.26 Under the first paragraph of **Note 2 on Rule 25.2**, as proposed to be amended, if the offeree board is unable to form a clear opinion on, or recommendation in respect of, the offer (including any alternative offers), this must be stated and an explanation given, including the arguments for acceptance or rejection of the offer (or any alternative offers) and emphasising the important factors.

5.27 Under the second paragraph of **Note 2 on Rule 25.2**, as proposed to be amended, an explanation must also be given if there is a divergence of views among the members of the board (in which case, the opinion and recommendation of the minority should also be included in the circular) or if the board's opinion is not consistent with the advice of the Rule 3 adviser.

(ii) Respondents' comments

5.28 One respondent noted that **Rule 15** does not currently include an equivalent Note to **Note 2 on Rule 25.2** and another respondent suggested that such a Note should be introduced into **Rule 15**.

(iii) *The Code Committee's response*

5.29 The Code Committee does not consider that it is necessary to introduce a Note equivalent to **Note 2 on Rule 25.2** into **Rule 15** on the basis that it is not aware of circumstances having arisen in which the board of the offeree company has been unable to form a clear opinion on any Rule 15 offer or proposal or in which there has been a divergence of views either among the members of the board or between the board and the independent adviser appointed under **Rule 15.2**.

5.30 The Code Committee has made a minor drafting change to the second paragraph of **Note 2 on Rule 25.2** so as to refer to a situation where there is a divergence of views between the board and the Rule 3 adviser (rather than referring to the board's opinion not being consistent with the advice of the Rule 3 adviser).

(iv) *Code amendments*

5.31 The Code Committee has amended **Note 2 on Rule 25.2** as proposed in paragraph 5.18 of the PCP, subject to minor drafting changes, as follows:

"2. Where there is no clear opinion and/or recommendation or where there is a divergence of views

(a) If the board of the offeree company is unable to form a clear opinion on, or recommendation in respect of, the offer (~~including or any alternative offer~~), this must be stated and an explanation given, including the key arguments for acceptance or rejection of the offer (or any alternative offer) and emphasising the ~~important~~ key factors.

(b) An explanation must also be given if there is a divergence of views among the members of the board (in which case, the opinion and recommendation of the minority should be included in the circular in addition to that of the majority) or ~~if between the board's opinion is not consistent with the advice of and the independent adviser appointed under Rule 3.1.~~

The Panel should be consulted in advance about the explanation which is to be given."

(d) **Directors' elections**

Q7 Should the offeree board circular be required to state details of the directors' intentions in relation to any alternative offers and, where required by the Panel, the reasons for a director's decision to elect for a particular alternative? Do you have any comments on the proposed amendments to Rule 25.4(a)?

(i) *Summary of proposals*

5.32 **Section 5(e)** of the PCP proposed amendments to **Rule 25.4(a)(v)** to:

- (a) require that, where there are alternative offers, the offeree board circular must state which alternative (if any) the directors intend to elect for in respect of their own shares; and
- (b) specify that the Panel may require the offeree board circular to state the directors' reasons for electing for a particular alternative.

(ii) Respondents' comments

- 5.33 All of the respondents supported, or did not object to, the proposals.
- 5.34 Two respondents queried what the position would be if the directors had not decided which of the alternative offers (if any) they intended to elect for or if they changed their minds after having disclosed their original intentions.

(iii) The Code Committee's response

- 5.35 In the context of a recommended offer, the Code Committee would normally expect the directors of the offeree company to have decided which of the alternative offers they intend to elect for by the time of the publication of the offer document (which will normally incorporate the offeree board circular) or the scheme circular. However, the Code Committee recognises that there may be circumstances in which one or more of the directors have not formed an intention by that time. The Executive should be consulted in such circumstances but the Code Committee considers that it would normally be appropriate for the directors to explain that they have not yet formed an intention, to set out the factors that they are likely to take into account in making their decision, and to make an announcement of their intention as and when such a decision is made.
- 5.36 The Code Committee notes that **Rule 25.4(a)(v)** will require the directors to state their current intentions and that those intentions might change during the course of the offer. The directors will not be bound by their statements of intention. However, the Code Committee understands that the Executive would consider a subsequent change of intention to be a material change in information disclosed in the offeree board circular. Accordingly, the offeree company will be required to announce a subsequent change of intention in accordance with **Rule 27.1(a)(i)**.

(iv) Code amendments

- 5.37 In the light of the above, the Code Committee has amended **Rule 25.4(a)(v)** as proposed in paragraph 5.22 of the PCP and as set out in **Part 1 of Appendix B**.

(e) Minor and consequential amendments

Q8 Should Note 2 on Rule 3.1, Note 2 on Rule 3.3 and Note 3 on Rule 25.2 be deleted as proposed?

5.38 **Section 5(f)** of the PCP proposed:

- (a) certain minor and consequential amendments to:
 - (i) **Note 1 on Rule 25.2** (*Factors which may be taken into account*);
 - (ii) **Note 4 on Rule 25.2** (*Conflicts of interest*); and
 - (iii) the cross-reference to **Rule 25.2** in **Section 4(j) of Appendix 1** of the Code; and
- (b) the deletion (on the basis that they are no longer required) of:
 - (i) **Note 2 on Rule 3.1** (*When there is uncertainty about financial information*);
 - (ii) **Note 2 on Rule 3.3** (*Investment trusts*); and
 - (iii) **Note 3 on Rule 25.2** (*When a board has effective control*),

and, accordingly, the renumbering of the remaining Notes on those Rules.

5.39 All of the respondents supported, or did not object to, the proposals.

5.40 In the light of the above, the Code Committee has:

- (a) subject to certain minor drafting amendments, amended **Note 1 on Rule 25.2**, **Note 4 on Rule 25.2** and the cross-reference to **Rule 25.2** in **Section 4(j) of Appendix 1**; and
- (b) deleted **Note 2 on Rule 3.1**, **Note 2 on Rule 3.3** and **Note 3 on Rule 25.2**, and renumbered the remaining Notes on those Rules as appropriate,

as proposed in **Section 5(f)** of the PCP and as set out in **Part 1 of Appendix B**.

6. Irrevocable commitments and letters of intent

Q9 Should Note 1 on Rules 35.1 and 35.2, Note 2 on Rule 2.5 and Note 2 on Rule 2.8 be amended as proposed in relation to the restrictions following the lapsing of an offer or a statement of no intention to bid?

(a) Summary of proposals

6.1 **Section 6** of the PCP proposed that, if a party to an offer or any person acting in concert with it procures an irrevocable commitment or letter of intent before the announcement of a firm intention to make an offer, that party should be required to publish the irrevocable commitment or letter of intent on a website by the current deadline for announcing details of the irrevocable commitment or letter of intent (rather than only following the announcement of a firm intention to make an offer).

(b) Respondents' comments

6.2 All of the respondents supported, or did not object to, the proposals.

(c) Code amendments

6.3 In the light of the above, the Code Committee has:

- (a) amended **Rule 2.10(a)**;
- (b) amended **Rule 2.10(b)**;
- (c) introduced the new **Rule 26.1(c)**; and
- (d) deleted **Rule 26.2(a)** and renumbered **Rules 26.2(b) to (e)** as **Rules 26.2(a) to (d)**,

as proposed in paragraph 6.12 of the PCP and as set out in **Part 1 of Appendix B**.

7. Formatting amendments

7.1 In order to assist with the preparation of a digital version of the Code, and the insertion of links to Rules and Notes within the proposed digital Code, the Code Committee has made formatting amendments to Notes on certain Rules, to cross-references within the Code to certain Rules and Notes, and to footnotes, as described in paragraphs 7.2, 7.3 and 7.4 below.

7.2 The Code Committee has:

- (a) moved **Notes 1 to 4 on Rules 4.1 and 4.2** (unamended) to become **Notes 1 to 4 on Rule 4.1**;
- (b) deleted **Note 5 on Rules 4.1 and 4.2** and reintroduced it (with an amended heading but otherwise unamended) as **Note 2 on Rule 4.4** (and renumbered the **Note on Rule 4.4** as **Note 1 on Rule 4.4**);
- (c) amended the heading “**Note on Rules 35.3 and 35.4**” so as to read “**Note on Rule 35.4**”; and
- (d) introduced a new **Note on Rule 35.3**, cross-referring to the re-titled “**Note on Rule 35.4**”,

as set out in **Part 2 of Appendix B**.

7.3 In addition, the Code Committee has amended:

- (a) **sections 10(c) and 10(e)** of the **Introduction** to the Code;
- (b) **Note 11** on the **definition of “acting in concert”** and **Note 1** on the **definition of “dealings”** in the **Definitions Section** of the Code;
- (c) **Rule 5.2(a); Notes 1, 3 and 4 on Rule 7.2; Rule 8.3(e); Note 9 on Rule 8; Rule 9.1; Notes 9 and 10 on Rule 9.1; Note 5 on Rule 9.5; Note 6 on Rule 10.1; Note 7 on Rule 11.2; Rule 11.3; Rule 13.5(b); Note 2 on Rule 17.3; Rule 21.2(b); Rule 24.3(d); Notes 3 and 4 on Rule 24.4; Rule 24.7; Rule 25.7; Rule 26.1(a); Rules 26.3(f) and (h); Note 6 on Rule 28.1; Note 1 on Rule 31.5; Rule 31.7; Note 1 on Rule 32.2 and Rule 33.1**;
- (d) **Sections 1(c), 4(k), 4(l), 4(p) and 7(a)** of **Appendix 1**;
- (e) **Section 7** of **Appendix 2**;
- (f) **Appendix 4**;

- (g) **Appendix 6;**
- (h) **Sections 14 and 16(j) of Appendix 7;** and
- (i) **Section 2(k) of Appendix 8,**

as set out in **Part 2 of Appendix B.**

7.4 The Code Committee has also amended the Code to delete footnotes from within the Code, as follows:

- (a) **section 3(a) of the Introduction** has been amended to delete the relevant footnotes and insert the text of the footnotes (unamended) at the end of **section 3(a) of the Introduction;**
- (b) the following provisions have been amended to delete the relevant footnote and insert new text into the relevant definition, Rule or Note:
 - (i) **the definition of “acting in concert”, the definition of “connected fund manager and connected principal trader” and Note 2 on the definition of “exempt fund manager and exempt principal trader”;** and
 - (ii) **Rule 4.4(a), Note 5(a) on Rule 8, Note 9 on Rule 9.1, Rule 12, Note 4 on Rule 20.1, Rule 24.10 and Note 4 on Rule 32.1;** and
- (c) the following provisions have been amended to delete the relevant footnote on the basis that the footnote is no longer necessary:
 - (i) **the headings of Rule 4.5, Rule 10, Note 3 on Rule 11.1, Rule 17, Rule 18, Rule 24.7, Rule 31, Note 3 on Rule 32.1, Note 3 on Rule 32.2, Rule 33 and Rule 34;** and
 - (ii) **Rule 32.1(c),**

as set out in **Part 2 of Appendix B.**

7.5 As these amendments do not alter the effect of the provisions in question, they have been made without consultation.

APPENDIX A**Respondents to PCP 2022/4**

1. Institute of Chartered Accountants in England and Wales
2. Joint Working Party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales
3. Quoted Companies Alliance
4. Share Plan Lawyers Group
5. UK Finance

APPENDIX B

Part 1: Consultation amendments to the Code

INTRODUCTION

2 THE CODE

...

(c) Derogations and Waivers

The Panel may derogate or grant a waiver to a person from the application of a rule (provided that the General Principles are respected) either:

- (i) in the circumstances set out in the rule; or
- (ii) in other circumstances where the Panel considers that the particular rule would operate unduly harshly or in an unnecessarily restrictive or burdensome or otherwise inappropriate manner (in which case a reasoned decision will be given).

In exceptional circumstances, for example, in order to facilitate the rescue of a company to which the Code applies which is in serious financial difficulty, the Panel may derogate or grant a waiver to a person from the application of a rule notwithstanding that, in doing so, one or more of the General Principles might not be respected.

Rule 2

2.2 WHEN AN ANNOUNCEMENT IS REQUIRED

...

NOTES ON RULE 2.2

...

~~2.~~ **Clear statements**

~~The Panel will not normally require an announcement under Rule 2.2(d) if it is satisfied that the price movement, rumour or speculation results only from a clear and unequivocal public statement, eg (a) a disclosure under the FCA Handbook; (b) an announcement of a dawn raid or an intention to purchase; or (c) an announcement of a tender offer.~~

~~32.~~ **Rumour and speculation during an offer period**

...

~~43.~~ **When a dispensation may be granted**

...

2.10 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

- (a) During an offer period, if any party to the offer or any person acting in concert with it procures an irrevocable commitment or a letter of intent, the relevant party to the offer must:

(i) announce the details in accordance with the Notes on this Rule 2.10;
and

(ii) publish the irrevocable commitment or letter of intent on a website,

by no later than 12 noon on the following business day.

(b) If any party to an offer or any person acting in concert with it has procured an irrevocable commitment or a letter of intent prior to the commencement of the offer period, it must:

(i) announce the details in accordance with the Notes on this Rule 2.10;
and

(ii) publish the irrevocable commitment or letter of intent on a website,

by no later than 12 noon on the business day following either the commencement of the offer period or (in the case of an offeror) the date of the announcement that first identifies the offeror as such (as appropriate).

Rule 3

3.1 BOARD OF THE OFFEREE COMPANY

The board of the offeree company must obtain competent independent advice as to whether the financial terms of any offer (including any alternative ~~offers~~ offer) are fair and reasonable and the substance of such advice must be made known to its shareholders. (See also Rule 15.2 and Rule 21.1(d)(i).)

NOTES ON RULE 3.1

...

~~2. When there is uncertainty about financial information~~

~~When there is a significant area of uncertainty in the most recently published accounts or interim figures of the offeree company (eg a qualified audit report, a material provision or contingent liability or doubt over the real value of a substantial asset, including a subsidiary company), the board and the independent adviser should highlight the factors which they consider important.~~

32. Where the independent adviser is unable to advise whether the financial terms of the offer are fair and reasonable

If the independent adviser is unable to advise the board of the offeree company whether the financial terms of an offer (or any alternative ~~offers~~ offer) are, or are not, fair and reasonable, this must be made known to offeree company shareholders and an explanation given in the offeree board circular. The Panel should be consulted in advance about the explanation which is to be given. (See also Note 2 on Rule 25.2.)

...

3.3 DISQUALIFIED ADVISERS

...

NOTES ON RULE 3.3

...

2. — Investment trusts

A person who manages or is part of the same group as the investment manager of an investment trust company will not normally be regarded as an appropriate person to give independent advice in relation to that company.

32. Success fees

...

Rule 9

9.5 CONSIDERATION TO BE OFFERED

...

NOTES ON RULE 9.5

...

3. Adjustment of highest price

...

The price payable in the circumstances set out above will be the price that is appropriate fair and reasonable taking into account all the factors that are relevant to the circumstances.

Any decision by the Panel to adjust ~~In any case where the highest price is adjusted under Rule 9.5(c) must be made public, the Panel will publish its decision.~~

...

NOTES ON DISPENSATIONS FROM RULE 9

...

3. Rescue operations

There are occasions when a company is in such a serious financial position that the only way it can be saved is by an urgent rescue operation which involves the issue of new shares without approval by a vote of independent shareholders or the acquisition of existing shares by the rescuer which would otherwise require an offer under Rule 9. The Panel may, however, waive the requirements of the Rule in such circumstances, subject to such conditions (if any) as the Panel considers appropriate. ~~provided that either:~~

~~(a) approval for the rescue operation by a vote of independent shareholders is obtained as soon as possible after the rescue operation is carried out; or~~

~~(b) some other protection for independent shareholders is provided which the Panel considers satisfactory in the circumstances.~~

~~Where neither the approval of independent shareholders nor any other form of protection can be provided, an offer under Rule 9 will be required. In such circumstances, however,~~

~~the Panel may consider an adjustment of the highest price, pursuant to Note 3 on Rule 9.5.~~

The requirements of Rule 9 will not normally be waived in a case where a major shareholder in a company rather than that company itself is in need of rescue. The situation of that shareholder may have little relevance to the position of other shareholders and, therefore, the purchaser from such major shareholder must expect to be obliged to extend an offer under Rule 9 to all other shareholders.

Rule 15

15.2 INDEPENDENT ADVICE AND ~~VIEWS~~ OPINION OF THE OFFEREE BOARD

~~(a)~~ (a) The board of the offeree company must obtain competent independent advice on ~~the each~~ offer or proposal and the substance of such advice must be made known to the holders of the Rule 15 securities, ~~together with~~

~~(b)~~ (b) In addition, the board's ~~views~~ opinion on ~~the each~~ offer or proposal should be made known to the holders of the Rule 15 securities, together with a recommendation as to the action that they should take. (See also Note 3.)

...

NOTES ON RULE 15

...

3. Where there are different possible courses of action

Where:

(a) holders of Rule 15 securities have a choice of different possible courses of action, more than one of which can, in the board's opinion, be recommended; but

(b) the appropriate action for individual holders of Rule 15 securities to take will depend on various factors and their particular circumstances.

the board may satisfy the requirement in Rule 15.2(b) by including statements to that effect and explaining the key factors which it considers that the holders of the Rule 15 securities should take into account in making their decision as to what action to take.

Rule 25

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

~~(a)~~—The offeree board circular must:

(a) set out the opinion of the board on the offer (including any alternative ~~offers~~ offer) and the board's reasons for forming its opinion and must include its views 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 24.2.;

~~(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 in relation to the financial terms of the offer (including any alternative offer); and~~

(c) include a recommendation from the board of the offeree company as to the action that shareholders should take in respect of the offer (including any alternative offer). (See also Note 2 and Note 3.)

NOTES ON RULE 25.2

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~~ under Rule 25.2(a) and its recommendation under Rule 25.2(c). 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. Where there is no clear opinion and/or recommendation or where there is a divergence of views

~~(a) If the board of the offeree company does not reach is unable to form a clear opinion on, or recommendation in respect of, the an offer (or any alternative 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 key arguments for acceptance or rejection of the offer (or any alternative offer), and emphasising the important key factors.~~

(b) An explanation must also be given if there is a divergence of views among the members of the board (in which case, the opinion and recommendation of the minority should be included in the circular in addition to that of the majority) or between the board and the independent adviser appointed under Rule 3.1.

The Panel should be consulted in advance about the explanation which is to be given.

~~The views of any directors who are in a minority should also be included in the circular.~~

~~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. Alternative offers

Where there are alternative offers and:

(a) more than one of the offers can, in the board's opinion, be recommended to shareholders; but

(b) the appropriate action for individual shareholders to take will depend on various factors and their particular circumstances,

the board may satisfy the requirement in Rule 25.2(c) by including statements to that effect and explaining the key factors which it considers that shareholders should take into account in making their decision as to what action to take.

4. Conflicts of interest

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

...

25.4 INTERESTS AND DEALINGS

(a) The offeree board circular must state:

...

(v) whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept or not accept the offer (and, if there are alternative offers, and if so required by the Panel, which alternative, if any, they intend to elect for and, if so required by the Panel, the reasons for making that election) or to reject the offer.

Rule 26

26.1 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION TO BE PUBLISHED ON A WEBSITE DURING AN OFFER

...

(c) If any party to an offer is required to announce details of an irrevocable commitment or a letter of intent in accordance with Rule 2.10(a) or Rule 2.10(b), the relevant party to the offer must publish that irrevocable commitment or letter of intent on a website in accordance with Rule 2.10(a) or Rule 2.10(b).

26.2 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE ANNOUNCEMENT OF A FIRM OFFER

The following documents must be published on a website promptly following the publication of the announcement of a firm intention to make an offer (or, if later, the date of the relevant document) and in any event by no later than 12 noon on the following business day:

~~(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;~~

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

(~~eb~~) 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;

(~~ec~~) any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2; and

(~~ed~~) 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 pre-condition or a condition to its offer (Rule 2.7(c)(vii)).

Appendix 1

APPENDIX 1

RULE 9 WAIVERS

...

4 RULE 9 WAIVER CIRCULAR

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

...

(j) Rules 23, Rule 24.2, Rule 24.3, Rule 25.2 and Rule 25.3 (offeror intentions, financial and other information, and ~~views-opinion~~ of the offeree board). Full details of the assets, if any, being injected must be included;

APPENDIX B

Part 2: Non-consultation amendments to the Code

INTRODUCTION

3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

...

(a) Companies

(i) UK, Channel Islands and Isle of Man registered and traded companies

The Code applies to all offers for companies (including, where appropriate, statutory and chartered companies and UK Societas) which have their registered offices* in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a UK regulated market or a UK multilateral trading facility# or on any stock exchange in the Channel Islands or the Isle of Man.

(ii) Other companies

The Code also applies to all offers (not falling within paragraph (i) above) for public and private companies† (and, where appropriate, statutory and chartered companies and UK Societas) which have their registered offices* in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:

- (A) any of their securities have been admitted to trading on a UK regulated market or a UK multilateral trading facility# or on any stock exchange in the Channel Islands or the Isle of Man at any time during the 10 years prior to the relevant date; or

...

(iii) Open-ended investment companies

The Code does not apply to offers for open-ended investment companies.

**In the case of a UK unregistered company, the reference to “registered office” shall be read as a reference to the company’s principal office in the UK.*

#In the case of a company whose securities are or have been admitted to trading on a UK multilateral trading facility, paragraph (i) will apply, and criterion (A) of paragraph (ii) will be satisfied, only if the company has approved trading, or requested admission to trading, of its securities on the relevant UK multilateral trading facility.

†With respect to either a company having its registered office in the Isle of Man and which is incorporated there under the Companies Act 2006 (an Act of Tynwald), or a company having its registered office in Guernsey, the company will be treated as being subject to the Code only when any of the criteria in (A) to (D) of paragraph (ii) apply.

~~*In the case of a UK unregistered company, the reference to “registered office” shall be read as a reference to the company’s principal office in the UK.¹~~

...

10 ENFORCING THE CODE

...

(c) Compensation rulings

Where a person has breached the requirements of any of Rules 6, Rule 9, Rule 11, Rule 14, Rule 15, Rule 16.1 or Rule 35.3 of the Code, ...

...

(e) Bid documentation rules

For the purposes of section 953 of the Act, the “offer document rules” and the “response document rules” are those parts of Rules 24 and Rule 25 respectively which are set out in Appendix 6 and, in each case, Rule 27 to the extent that it requires the inclusion of material changes to, or the updating of, the information in those parts of Rules 24 or Rule 25, as the case may be, in relation to offer documents and offeree board circulars and the revised offer documents and subsequent offeree board circulars referred to in Rules 32.1 and Rule 32.6 respectively.

DEFINITIONS

Acting in concert

...

(1) a company (“X”) and any company which controls#, is controlled by or is under the same control as X, all with each other;

...

(5) an investment manager of or investment adviser to:

(a) an offeror;

(b) an investor in a new company (or other vehicle) formed for the purpose of making an offer; or

(c) the offeree company,

with the offeror or offeree company (as appropriate), together with any person controlling#, controlled by or under the same control as that investment manager or investment adviser;

(6) a connected adviser with its client and, if its client is acting in concert with an offeror or the offeree company, with that offeror or offeree company respectively, in each case

¹ Footnotes *, † and # on pages A2 and A3 of the Code will cease to be footnotes and the text moved, unamended, to the end of **section 3(a)** of the **Introduction**. Footnote * on page A3 deleted as it repeats footnote * on page A2.

in respect of the interests in shares of that adviser and persons controlling#, controlled by or under the same control as that adviser (except in the capacity of an exempt fund manager or an exempt principal trader);

...

See also Rule 7.2.

#See the Note on Definitions at the end of the Definitions Section.

~~#See Note at end of Definitions Section.²~~

NOTES ON ACTING IN CONCERT

...

11. Indemnity and other dealing arrangements

...

(b) ...

Such dealing arrangements must be disclosed as required by Rule 2.4(c)(iv), Rule 2.7(c)(xii), Notes 5 and Note 6 on Rule 8, Rule 24.13 and Rule 25.6.

...

Connected fund manager and connected principal trader

A fund manager or principal trader will normally be connected with an offeror or the offeree company, as the case may be, if the fund manager or principal trader is controlled# by, controls or is under the same control as:

...

See also Rule 7.2.

#See the Note on Definitions at the end of the Definitions Section.

~~#See Note at end of Definitions Section.³~~

...

Dealings

...

² Footnote # on each of pages C1 and C2 of the Code will be deleted and the new text inserted at the end of the **definition of “acting in concert”**, as shown.

³ Footnote # on page C8 of the Code will be deleted and the new text inserted at the end of the **definition of “connected fund manager and connected principal trader”**, as shown.

NOTES ON DEALINGS

1. Indemnity and other dealing arrangements

Dealing arrangements of the kind referred to in Note 11 on the definition of acting in concert in relation to relevant securities which are entered into during the offer period by any offeror, the offeree company or a person acting in concert with any offeror or the offeree company must be disclosed as required by Rule 2.7(c)(xii), Notes 5 and Note 6 on Rule 8, Rule 24.13 and Rule 25.6.

...

Exempt principal trader

...

NOTES ON EXEMPT FUND MANAGER AND EXEMPT PRINCIPAL TRADER

2. When a principal trader or fund manager is connected with the offeror or offeree company, exempt status is not relevant unless the sole reason that it is a connected principal trader or a connected fund manager is that it is controlled# by, controls or is under the same control as a connected adviser to:

...

References in the Code to exempt principal traders or exempt fund managers should be construed accordingly. (See also Rule 7.2.)

#See the Note on Definitions at the end of the Definitions Section.

~~#See Note at end of Definitions Section.⁴~~

Rule 4

4.1 PROHIBITED DEALINGS BY PERSONS OTHER THAN THE OFFEROR

...

NOTES ON RULE 4.1⁵

1. Other circumstances in which dealings may not take place

An offeror or other persons may also be restricted from dealing or procuring others to deal in certain other circumstances, eg before the announcement of an offer, if the offeror has been supplied by the offeree company with confidential price-sensitive information in the course of offer discussions.

⁴ Footnote # on page C12 of the Code will be deleted and the new text inserted at the end of **Note 2** on the **Notes on "exempt fund manager and exempt principal trader"**, as shown.

⁵ **Notes 1 to 4 on Rules 4.1 and 4.2** moved (unamended) to become **Notes 1 to 4 on Rule 4.1**. **Note 5 on Rules 4.1 and 4.2** deleted and reintroduced (with an amended heading but otherwise unamended) as **Note 2 on Rule 4.4**.

2. Consortium offers and joint offerors

If an offer is to be made by more than one offeror or by a company formed by a group of persons to make an offer or by any other consortium offer vehicle, the offerors or group involved will normally be considered to be in a consortium for the purpose of this Note.

The Panel must be consulted before any acquisitions of interests in offeree company securities are made by members or potential members of a consortium. If there are existing interests in such securities, it will be necessary to satisfy the Panel that they were acquired before the consortium was formed or contemplated.

It will not normally be acceptable for members of a consortium to acquire interests in offeree company securities unless there are, for example, when a consortium company is to be the offeror, appropriate arrangements to ensure that such acquisitions are made proportionate to members' interests in the consortium company or under arrangements which give no profit to the party making the acquisition. The Panel will also be concerned to ensure that the purposes of the Code are not avoided through characterising persons acting in concert as joint offerors.

3. No-profit arrangements

Arrangements made by a potential offeror with a person acting in concert with it, whereby interests in offeree company securities are acquired by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Panel must be consulted.

4. When an offer will not be made

If, after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, the discussions are terminated or the offeror decides not to make an offer, no dealings in securities of the offeree company or, where relevant, the offeror, by the offeror or by any person privy to this information may take place prior to an announcement of the position.

4.2 RESTRICTION ON DEALINGS BY AN OFFEROR AND PERSONS ACTING IN CONCERT

...

~~NOTES ON RULES 4.1 and 4.2~~⁶

...

~~5. No dealing contrary to published advice~~

~~*Directors and financial advisers to a company who have interests in securities in that company must not deal in such securities contrary to any advice they have published, or to any advice with which it can reasonably be assumed that they were associated, without giving sufficient public notice of their intentions together with an appropriate explanation.*~~

⁶ Notes 1 to 4 on Rules 4.1 and 4.2 moved (unamended) to become Notes 1 to 4 on Rule 4.1. Note 5 on Rules 4.1 and 4.2 deleted and reintroduced (with an amended heading but otherwise unamended) as Note 2 on Rule 4.4.

...

4.4 DEALINGS IN OFFEREE COMPANY SECURITIES BY CERTAIN PERSONS ACTING IN CONCERT WITH THE OFFEREE COMPANY

(a) Except with the consent of the Panel, during the offer period, none of:

...

(iii) any person controlling~~#~~, controlled by or under the same control as any such connected adviser, connected fund manager or connected principal trader,

may take any of the actions specified in paragraph (b).

See also the Note on Definitions at the end of the Definitions Section.

~~#See Note at end of Definitions Section.⁷~~

...

NOTES ON RULE 4.4

1. Irrevocable commitments and letters of intent

Rule 4.4(b)(iii) does not prevent an adviser to an offeree company from procuring irrevocable commitments or letters of intent not to accept an offer.

2. Dealing contrary to published advice

Directors and financial advisers to a company who have interests in securities in that company must not deal in such securities contrary to any advice they have published, or to any advice with which it can reasonably be assumed that they were associated, without giving sufficient public notice of their intentions together with an appropriate explanation.

4.5 RESTRICTION ON THE OFFEREE COMPANY ACCEPTING AN OFFER IN RESPECT OF TREASURY SHARES*

...

~~*This Rule is disapplied in a scheme.~~

Rule 5

5.2 EXCEPTIONS TO RESTRICTIONS

The restrictions in Rule 5.1 do not apply to an acquisition of an interest in shares carrying voting rights in a company by a person:

⁷ Footnote # on page E3 of the Code (and the "#" in Rule 4.4(a)(iii)) will be deleted and the new text inserted at the end of Rule 4.4(a), as shown.

- (a) at any time from a single shareholder if it is the only such acquisition within any period of 7 days (see also Rules 5.3 and Rule 5.4). ...

Rule 7

7.2 TIME FROM WHICH PRESUMPTIONS OF ACTING IN CONCERT APPLY

...

NOTES ON RULE 7.2

1. *Previous dealings*

Subject to Note 2, dealings and securities borrowing and lending transactions by connected fund managers and connected principal traders prior to the relevant time specified in Rule 7.2(a) or Rule 7.2(b) will not be relevant for the purposes of (as appropriate) Rules 4.2, Rule 4.6, Rule 5, Rule 6, Rule 9.5, Rule 11 and Rule 36.

...

3. **“Book flattening” by connected principal traders**

(a) *With the prior consent of the Panel, after a connected principal trader is presumed to be acting in concert with an offeror or the offeree company, it may, within a time period agreed in advance by the Panel:*

(i) reduce its interests in securities of the offeree company or an offeror, or acquire interests in such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rules 4.2, Rule 4.4, Rule 5, Rule 6, Rule 9.5, Rule 11 and Rule 36; and

(ii) pursuant to Rule 4.6, take action to unwind a securities borrowing or lending transaction in respect of relevant securities of the offeree company.

(b) Any such dealings must be disclosed under Rules 4.6, Rule 8.4, Rule 24.4 or Rule 25.4, as appropriate.

4. **Dealings by connected fund managers**

(a) *After a connected fund manager is presumed to be acting in concert with an offeror or the offeree company, it may, with the prior consent of the Panel and within a time period agreed in advance by the Panel:*

(i) acquire an interest in securities of the offeree company, with a view to reducing any short position, without such acquisitions being relevant for the purposes of Rules 4.4, Rule 5, Rule 6, Rule 9.5, Rule 11 and Rule 36; and

Rule 8

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

...

(e) A person making a disclosure in accordance with Rules 8.1, Rule 8.2, Rule 8.4 or Rule 8.5 need not also disclose the same information pursuant to Rule 8.3.

...

NOTES ON RULE 8

...

5. Details to be included in the disclosure

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

...

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

#See the Note on Definitions at the end of the Definitions Section.

~~#See Note at end of Definitions Section.~~⁸

...

9. Recognised intermediaries

(a) *The exceptions in this Rule in relation to recognised intermediaries must not be used to avoid or delay disclosures. ... In addition, if such an arrangement is entered into with an offeror or a person acting in concert with the offeror, it might mean that the recognised intermediary is acting in concert with the offeror and normal concert party consequences might follow (such as the application of Rules 4, Rule 5, Rule 6, Rule 7, Rule 9, Rule 11 and Rule 24 and disclosure of dealings by the recognised intermediary under Rule 8.4).*

Rule 9

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

Except with the consent of the Panel, when:

(a) ...

(b) ...

⁸ Footnote # on page E29 of the Code will be deleted and the new text inserted at the end of **Note 5(a)** on **Rule 8**, as shown.

such person shall extend offers, on the basis set out in Rules 9.3 and Rule 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any other class of transferable securities carrying voting rights.

...

NOTES ON RULE 9.1

...

9. Triggering Rule 9 during an offer period*

...

(e) Rule 9.4(c) and Notes 3 and Note 4 on Rule 32.1 set out certain restrictions on the incurring of an obligation under Rule 9 during the offer period.

(f) In the case of a scheme of arrangement see Note 2 on Section 2 of Appendix 7.

~~*In the case of a scheme of arrangement, see Note 2 on Section 2 of Appendix 7.~~

10. Convertible securities, warrants and options

...

Where there are conversion or subscription rights currently capable of being exercised, this Rule is invoked at a level of 30% of the existing voting rights. Where they are capable of being exercised during an offer period, Notes 2 and Note 3 on Rule 10.1 will be relevant.

...

9.5 CONSIDERATION TO BE OFFERED

...

NOTES ON RULE 9.5

...

5. "Look-back period"

... The same approach will apply to the 12 month periods referred to in Notes 2 and Note 3 on Rule 9.5.

Rule 10

RULE 10. THE ACCEPTANCE CONDITION*

10.1 REQUIREMENT FOR 50% ACCEPTANCE CONDITION

...

NOTES ON RULE 10.1

...

6. Satisfaction of the acceptance condition before the unconditional date

In determining whether an acceptance condition has been satisfied (or is capable of being satisfied) before the unconditional date, all acceptances and purchases that comply with the requirements of Notes 4 and Note 5 on Rule 10.1 may be counted, other than those which fall within paragraph (c)(iii) of Note 4 or Note 8 on Rule 10.1.

...

~~**This Rule is disapplied in a scheme.*~~

Rule 11

11.1 WHEN A CASH OFFER IS REQUIRED

...

NOTES ON RULE 11.1

...

3. When the obligation is satisfied*

...

~~**This Note is disapplied in a scheme.*~~

...

11.2 WHEN A SECURITIES OFFER IS REQUIRED

...

NOTES ON RULE 11.2

...

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

See Notes 2, Note 5, Note 6, Note 7, Note 9 and Note 10 on Rule 11.1 which may be relevant.

11.3 DISPENSATION FROM HIGHEST PRICE

If the offeror considers that the highest price (for the purpose of Rules 11.1 and Rule 11.2) should not apply in a particular case, the offeror should consult the Panel, which has discretion to agree an adjusted price.

Rule 12

RULE 12. LONG-STOP DATE*

NB In the case of a scheme of arrangement see Appendix 7.

...

~~*Rule 12 is disapplied in a scheme. See Appendix 7.~~

Rule 13

13.5 INVOKING CONDITIONS AND PRE-CONDITIONS

...

(b) The following will not be subject to Rule 13.5(a):

(i) the acceptance condition (see Rules 9.3 and Rule 10.1);

...

(vi) a term relating to the long-stop date of a contractual offer (but see the separate requirements of Rules 12.1 and Rule 12.2);

Rule 17

RULE 17. ANNOUNCEMENT OF ACCEPTANCE LEVELS*

...

17.3 GENERAL STATEMENTS ABOUT ACCEPTANCE LEVELS

...

NOTES ON RULE 17.3

...

2. *Incomplete acceptances and offeror purchases*

Acceptances not complete in all respects and purchases must only be included in the statement required under this Rule of the total number of shares which the offeror may count towards the satisfaction of its acceptance condition where they could be counted towards satisfying an acceptance condition under Notes 4, Note 5 and Note 6 on Rule 10.1.

Rule 18

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

...

~~*This Rule is disapplied in a scheme.~~

Rule 20**20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS**

...

NOTES ON RULE 20.1

...

4. Investment analyst publications

(a) *During an offer period, a firm which publishes investment research which is:*

...

(ii) *under the same control# as a connected adviser to an offeror or the offeree company; or*

...

may only publish information relating to an offer or a party to an offer with the prior consent of the Panel. A draft must be sent to the Panel for review as early as possible prior to publication.

#See the Note on Definitions at the end of the Definitions Section.

~~*#See Note at end of Definitions Section.*~~⁹

Rule 21**21.2 OFFER-RELATED ARRANGEMENTS**

...

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

(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 Rule 2.3(d) or otherwise under the Code;

Rule 24**24.3 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER**

⁹ Footnote # on page 110 of the Code will be deleted and the new text inserted at the end of **Note 4(a)** on **Rule 20.1**, as shown.

...

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

...

(xx) a list of the documents which the offeror has published on a website in accordance with Rules 26.2 and Rule 26.3 and the address of the website on which the documents are published; and

...

24.4 INTERESTS AND DEALINGS

...

NOTES ON RULE 24.4

...

3. Connected fund managers and connected principal traders

Interests in relevant securities and short positions of non-exempt connected fund managers and connected principal traders and their dealings since the date 12 months prior to the offer period will need to be disclosed under Rules 24.4(a)(ii)(b) and Rule 24.4(c) respectively.

4. Competing offerors

Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 24.4(a)(iii) and (iv), Rule 24.4(b) and Rule 24.4(c) must be included in relation to the relevant securities of each securities exchange offeror or potential offeror.

...

24.7 INCORPORATION OF OBLIGATIONS AND RIGHTS*

The offer document must state the time allowed for acceptance of the offer and any alternative offer and must incorporate language which appropriately reflects Notes 4–8 on Rule 10.1 and those parts of Rules 13.6 (if applicable), ~~and 31–34~~ Rule 31, Rule 32, Rule 33 and Rule 34 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of offeree companies.

*~~*This Rule is disapplied in a scheme.~~*

...

24.10 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS*

(a) Where securities are offered as consideration and it is intended that they should be admitted to listing on the Official List and/or to trading on a recognised investment exchange, the relevant admission to listing and/ or trading condition should, except with the consent of the Panel, be in terms which ensure that it is capable of being satisfied only when the decision to admit the securities to listing or trading has been announced by the FCA and/or the relevant recognised investment exchange, as applicable.

(b) Where securities are offered as consideration and it is intended that they should be admitted to listing or to trading on any other investment exchange or market, the Panel should be consulted.

(c) In the case of a scheme of arrangement see Section 15 of Appendix 7.

~~**This Rule is disappplied in a scheme. See Section 15 of Appendix 7.*~~

Rule 25

25.7 OTHER INFORMATION

The offeree board circular must contain:

...

(c) any post-offer undertaking or post-offer intention statement made by the offeree company (see Rules 19.5 and Rule 19.6);

(d) a list of the documents which the offeree company has published on a website in accordance with Rules 26.2 and Rule 26.3 and the address of the website on which the documents are published; and

(e) any profit forecast or quantified financial benefits statement and any related reports or confirmations required by Rule 28.

Rule 26

26.1 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION TO BE PUBLISHED ON A WEBSITE DURING AN OFFER

(a) The following documents, announcements and information must be published on a website by the offeror or offeree company, as relevant, promptly following the publication of the relevant document, announcement or information and in any event by no later than 12 noon on the following business day:

(i) ...

(ii) ...

(iii) any document or information required to be published on a website under Rule 20.1 or any other provision of the Code (other than Rules 26.2 or Rule 26.3).

...

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

The following documents must be published on a website from the time the offer document or offeree board circular, as appropriate, is published (or, if later, the date of the relevant document):

...

(f) where an asset valuation has been published:

...

(iii) if appropriate, the confirmation by the valuer that an updated valuation would not be materially different (Rules 29.5(a) and Rule 27.2(d));

...

(h) all derivative contracts which in whole or in part have been disclosed under Rules 24.4(a) and (c) and Rules 25.4(a) and (c) or in accordance with Rules 8.1, Rule 8.2 or Rule 8.4. Documents in respect of the last mentioned must be published from the time the offer document or the offeree board circular is published or from the time of disclosure, whichever is the later.

Rule 28

28.1 REQUIREMENTS FOR PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS

...

NOTES ON RULE 28.1

...

6. *Investment analyst and other third party forecasts*

Except as provided in Rules 28.7 and Rule 28.8, ...

Rule 31

RULE 31. TIMING OF THE OFFER*

31.5 ACCELERATION STATEMENTS

...

NOTES ON RULE 31.5

1. *Reservation of the right to set an acceleration statement aside*

...

(c) *Notes 2 and Note 3 on Rule 31.5 describe examples of specific types of reservation to set an acceleration statement aside. However, other types of reservation may also be made (for example, a reservation relating to the recommendation of an increased or improved offer by the board of the offeree company), provided that they comply with the requirements of this Note 1.*

...

31.7 PROCEDURAL MATTERS ON THE UNCONDITIONAL DATE

(a) For the purpose of the acceptance condition, the offeror may only take into account acceptances or purchases of shares in respect of which all relevant electronic instructions or documents (as required by Notes 4 and Note 5 on Rule 10.1) are received by its receiving agent before the last time for acceptance set out in the offeror's relevant document or announcement. ...

...

~~*This Rule is disapplied in a scheme. See Appendix 7.~~

Rule 32

32.1 PUBLICATION OF REVISED OFFER DOCUMENT

...

(c) The offer must be kept open for at least 14 days following the publication of the revised offer document. Therefore, no revised offer document may be published after Day 46 or, where the offeror has made an acceleration statement, after the date which is 14 days prior to the unconditional date.*

~~*Rule 32.1(c) is disapplied in a scheme. See Section 7 of Appendix 7.~~

NOTES ON RULE 32.1

...

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

An offeror must not place itself in a position where it would be required to revise its offer:

- (a) after the date referred to in Rule 32.1(c); or
- (b) if it has made a no increase statement as defined in Rule 32.2.

~~*Paragraph (a) of Note 3 on Rule 32.1 is disapplied in a scheme. See Section 7 of Appendix 7.~~

4. **Triggering Rule 9†**

When an offeror, which is making a voluntary offer either in cash or with a cash alternative, acquires an interest in shares which causes it to have to extend a mandatory offer under Rule 9 at no higher price than the existing cash offer, the change in the nature of the offer will not be treated as a revision (and will not be precluded by an earlier no increase statement).

See also Note 9 on Rule 9.1, ~~and Rule 9.4(c) and, in the case of a scheme of arrangement, Section 2 of Appendix 7.~~

~~†This Note is disapplied in a scheme. See Section 2 of Appendix 7.~~

32.2 NO INCREASE STATEMENTS

...

NOTES ON RULE 32.2**1. Reservation of the right to set a no increase statement aside**

...

(c) *Notes 2 and Note 3 on Rule 32.2 describe examples of specific types of reservation to set a no increase statement aside. However, other types of reservation may also be made (for example, a reservation relating to the recommendation of an increased or improved offer by the board of the offeree company), provided that they comply with the requirements of this Note 1.*

...

3. Rule 31.8 announcements*

...

~~*This Note is disapplied in a scheme.~~

Rule 33**RULE 33. ALTERNATIVE OFFERS*****33.1 TIMING AND REVISION**

The provisions of Rules 31 and Rule 32 apply equally to alternative offers.

...

~~*This Rule is disapplied in a scheme. See Appendix 7.~~

Rule 34**RULE 34. RIGHT OF WITHDRAWAL***

...

~~*This Rule is disapplied in a scheme.~~

Rule 35**35.3 DELAY OF 6 MONTHS BEFORE ACQUISITIONS ABOVE THE OFFER VALUE**

...

NOTE ON RULE 35.3**Determination of price**

See the Note on Rule 35.4.

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

...

NOTE ON RULES ~~35.3~~ and 35.4

Determination of price

The price paid for any acquisition of an interest in shares will be determined in the manner set out in Note 4 on Rule 6 (other than the final paragraph of that Note).

However, where:

- (a) a call option was entered into during any period that was relevant for the purposes of Rule 6 (or Rule 9.5, where relevant) in relation to the previous or lapsed offer; and*
- (b) that call option is exercised:*
 - (i) during the six month period referred to in Rule 35.3 (in the case of Rule 35.3); or*
 - (ii) before any competing offer has either become or been declared unconditional or has itself lapsed (in the case of Rule 35.4),*

then the person will be treated as having acquired an interest in shares at the time of such exercise and, for the purposes of Rule 35.3 or Rule 35.4 (as the case may be), the price paid will normally be treated as the amount paid on exercise of the option together with any amount paid by the option-holder on entering into the option.

Where a person acquired an interest in shares before the period referred to in paragraph (a) above as a result of any option, derivative or agreement to purchase and, during the relevant period referred to in paragraph (b) above, the person acquires any of the relevant shares, no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, if the terms of the instrument have been varied in any way, or if the shares are acquired other than on the terms of the original instrument, the Panel should be consulted.

Appendix 1

APPENDIX 1

RULE 9 WAIVERS

...

1 INTRODUCTION

...

- (c) Rules 19, Rule 20, Rule 21.3, Rule 24.15, Rule 26, and Rule 30, where relevant, apply equally to documents, announcements and information published in connection with a transaction which is the subject of the Rule 9 waiver.**

...

4 RULE 9 WAIVER CIRCULAR

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

...

(k) Rules 24.4 and Rule 25.4 (disclosure of interests and dealings). Dealings in respect of Rule 24.4 should be covered for the 12 months prior to the publication of the circular but dealings in respect of Rule 25.4 need not be disclosed as there is no offer period;

(l) Rules 24.6 and Rule 24.9 (arrangements in connection with the proposal);

...

(p) Rules 28 and Rule 29 (profit forecasts, quantified financial benefits statements and asset valuations relating to the offeree company or relating to assets being acquired by the offeree company).

...

7 SUBSEQUENT ACQUISITIONS BY POTENTIAL CONTROLLERS

(a) Immediately following approval of the proposals at the shareholders' meeting, the potential controllers will be free to acquire further interests in shares of the offeree company, subject to the provisions of Rules 5 and Rule 9.

Appendix 2

APPENDIX 2

FORMULA OFFERS GUIDANCE NOTE

...

7 RULES 9 AND 11

Rules 9 and Rule 11 apply equally to formula offers; thus, if appropriate, the cash offer must contain a term guaranteeing a minimum price under the offer at the highest cash price paid in respect of the acquisitions of interests in shares to which the Rules apply.

Appendix 4

APPENDIX 4

RECEIVING AGENTS' CODE OF PRACTICE

NB 1 This Appendix should be read in conjunction with Rules 9.3 and Rule 10.1 and, in particular, Notes 4–8 on Rule 10.1.

Appendix 6

APPENDIX 6

BID DOCUMENTATION RULES FOR THE PURPOSES OF SECTION 953 OF THE COMPANIES ACT 2006

For the purposes of section 953 of the Act, “offer document rules” and “response document rules” are those made in accordance with, respectively, paragraph 12(4) and paragraph 18(1) of Schedule 1C to the Act (see section 10(e) of the Introduction). The relevant parts of Rules 24 and Rule 25 are set out below. Rule 27 is also relevant to the extent set out in section 10(e) of the Introduction.

Appendix 7

APPENDIX 7

SCHEMES OF ARRANGEMENT

14 INCORPORATION OF OBLIGATIONS AND RIGHTS

In addition to the relevant requirements of Rules 24 and Rule 25, the scheme circular must incorporate language which appropriately reflects those parts of Rule 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.

...

16 PROVISIONS DISAPPLIED IN A SCHEME

The following provisions of the Code do not apply to a scheme of arrangement:

...

(j) Rule 32.1(c), Notes 3 (paragraph (a)) and Note 4 on Rule 32.1 and Note 3 on Rule 32.2 (revision);

Appendix 8

APPENDIX 8

AUCTION PROCEDURE FOR THE RESOLUTION OF COMPETITIVE SITUATIONS

2 GENERAL

...

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

APPENDIX C

Example recommendation language

1. Single, recommended Offer

[Note: set out the offeree board's opinion per Rule 25.2(a)]

The ***[Offeree]*** Directors, who have been so advised by ***[Rule 3 adviser]*** as to the financial terms of the Offer, consider the terms of the Offer to be fair and reasonable. In providing its advice to the ***[Offeree]*** Directors, ***[Rule 3 adviser]*** has taken into account the commercial assessments of the ***[Offeree]*** Directors.

[scheme of arrangement:] The ***[Offeree]*** Directors unanimously recommend that ***[Offeree]*** Shareholders vote in favour of the Scheme at the Court Meeting and the Special Resolution to be proposed at the General Meeting.

[contractual offer:] The ***[Offeree]*** Directors unanimously recommend that ***[Offeree]*** Shareholders accept the Offer.

[Note: insert statement as to the offeree directors' intentions in respect of their own beneficial shareholdings]

2. Main Offer and Alternative Offer, both recommendable

[Note: set out the offeree board's opinion per Rule 25.2(a)]

The ***[Offeree]*** Directors, who have been so advised by ***[Rule 3 adviser]*** as to the financial terms of each of the Main Offer and the Alternative Offer, consider the terms of each of the Main Offer and the Alternative Offer to be fair and reasonable. In providing its advice to the ***[Offeree]*** Directors, ***[Rule 3 adviser]*** has taken into account the commercial assessments of the ***[Offeree]*** Directors.

[scheme of arrangement:] The ***[Offeree]*** Directors unanimously recommend that ***[Offeree]*** Shareholders vote in favour of the Scheme at the Court Meeting and the Special Resolution to be proposed at the General Meeting and elect for either the Main Offer or the Alternative Offer.

[contractual offer:] The ***[Offeree]*** Directors unanimously recommend that ***[Offeree]*** Shareholders accept either the Main Offer or the Alternative Offer.

In deciding which of the Main Offer and the Alternative Offer to [elect for/accept], ***[Offeree]*** Shareholders should consider their particular circumstances and take into account the key factors set out in paragraph [].

[Note: insert statement as to the offeree directors' intentions in respect of their own beneficial shareholdings, including which alternative (if any) they intend to elect for and, if required by the Panel, their reasons for making that election]

3. Main Offer recommended, Alternative Offer not recommendable

[Note: set out the offeree board's opinion per Rule 25.2(a)]

The ***[Offeree]*** Directors, who have been so advised by ***[Rule 3 adviser]*** as to the financial terms of the Main Offer, consider the terms of the Main Offer to be fair and reasonable. In

providing its advice to the **[Offeree]** Directors, **[Rule 3 adviser]** has taken into account the commercial assessments of the **[Offeree]** Directors.

[scheme of arrangement:] The **[Offeree]** Directors unanimously recommend that **[Offeree]** Shareholders vote in favour of the Scheme at the Court Meeting and the Special Resolution to be proposed at the General Meeting.

[contractual offer:] The **[Offeree]** Directors unanimously recommend that **[Offeree]** Shareholders accept the Main Offer.

The **[Offeree]** Directors, who have been so advised by **[Rule 3 adviser]** as to the financial terms of the Alternative Offer, consider that the Alternative Offer [undervalues **[Offeree]**]. In providing its advice to the **[Offeree]** Directors, **[Rule 3 adviser]** has taken into account the commercial assessments of the **[Offeree]** Directors.

For the reasons set out in paragraph [], the **[Offeree]** Directors unanimously recommend that **[Offeree]** Shareholders do not [elect for/accept] the Alternative Offer.

[Note: insert statement as to the offeree directors' intentions in respect of their own beneficial shareholdings, including which alternative (if any) they intend to elect for and, if required by the Panel (e.g. if electing for the Alternative Offer), their reasons for making that election]

4. Main Offer recommended, offeree board and Rule 3 adviser unable to form an opinion on Alternative Offer

[Note: set out the offeree board's opinion per Rule 25.2(a)]

The **[Offeree]** Directors, who have been so advised by **[Rule 3 adviser]** as to the financial terms of the Main Offer, consider the terms of the Main Offer to be fair and reasonable. In providing its advice to the **[Offeree]** Directors, **[Rule 3 adviser]** has taken into account the commercial assessments of the **[Offeree]** Directors.

[scheme of arrangement:] The **[Offeree]** Directors unanimously recommend that **[Offeree]** Shareholders vote in favour of the Scheme at the Court Meeting and the Special Resolution to be proposed at the General Meeting.

The **[Offeree]** Directors and **[Rule 3 adviser]** have considered the key advantages and disadvantages in relation to the Alternative Offer outlined at paragraph [].

[Rule 3 adviser] is unable to advise the **[Offeree]** Directors whether the financial terms of the Alternative Offer are or are not fair and reasonable. **[Note: insert explanation per Note 2 on Rule 3.1]**

The **[Offeree]** Directors are unable to form an opinion on, or recommendation in respect of, the Alternative Offer. **[Note: insert explanation per Note 2(a) on Rule 25.2]**

[scheme of arrangement:] **[Offeree]** Shareholders are encouraged to take into account the key advantages and disadvantages outlined in paragraph [] in relation to the Alternative Offer, as well as their particular circumstances, when deciding whether to elect for the Alternative Offer.

[contractual offer:] The **[Offeree]** Directors unanimously recommend that **[Offeree]** Shareholders accept the Main Offer. **[Offeree]** Shareholders are encouraged to take into account the key advantages and disadvantages outlined in paragraph [] in relation to the Alternative Offer, as well as their particular circumstances, when deciding whether instead to accept the Alternative Offer.

[Note: insert statement as to the offeree directors' intentions in respect of their own beneficial shareholdings, including which alternative (if any) they intend to elect for and, if required by the Panel (e.g. if electing for the Alternative Offer), their reasons for making that election]