

IRISH TAKEOVER PANEL

CONSULTATION PAPER 1

**INCORPORATION BY REFERENCE
REQUIREMENT TO PUBLISH ON WEBSITE
OTHER MISCELLANEOUS AMENDMENTS**

**PROPOSALS TO AMEND THE
TAKEOVER RULES**

7 July 2011

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Introduction

This paper sets out proposals to amend the Irish Takeover Panel Act 1997, Takeover Rules, 2007 to 2008 (“the Rules”) to permit the incorporation of information into documents required under the Rules to be dispatched to shareholders (“relevant documents”) by reference to another source of information and to require offerors and offerees to publish on their websites all documents, announcements and information issued by them relating to the offer.

Given the increase in the amount of detailed information, particularly of a financial nature (e.g. notes to financial statements), required to be included in relevant documents, it is proposed to amend the Rules to permit certain information that is currently required to be included in relevant documents to be incorporated into those documents by reference to another source of information. The current practice of the Panel is to permit incorporation of information by reference to another source of information only in the case of whitewash circulars and specifically, in relation to financial information, where that information is to be posted to shareholders in the same envelope as the whitewash circular.

At present there is no obligation on the offeror or the offeree to publish any documents relating to the offer on its website or on any other website. However, the majority of offerors publish their offer documents and related announcements on their websites. The majority of offerees do likewise with regard to their first response circulars. It is proposed to amend the Rules to require both the offeror and the offeree to make available on their respective websites all information published by them in relation to the offer subject to certain minor exceptions.

Furthermore, it is proposed to amend the Rules to require copies of all documents required to be put on display pursuant to Rule 26 to be published on a website in addition to being put on display in hard copy form. In addition, it is proposed to amend the list of documents that are required under Rule 26 to be put on display.

In summary, the main rule amendments being proposed are as follows:

- Rule 24.15 – Offerors and offerees will be permitted to incorporate certain information into relevant documents by reference to another source, including information on a website.
- Rule 19.9 - Each offeror and offeree will be required to make available on its website or, with Panel consent, the website of another person all information published by it in relation to an offer, other than certain limited information.
- Rule 26 - The list of documents required to be put on display by an offeror and the offeree will be amended and copies of all such documents will have to be published on a website as well as displayed in hard copy format.

The Panel has considered the proposed changes in relation to General Principles 1 and 2 and is of the view that offeree shareholders will continue to be afforded equivalent treatment and will have sufficient time and information to enable them to reach a properly informed decision in relation to an offer.

The Panel notes that the Panel on Takeovers and Mergers in the UK amended the Takeover Code in March 2009 to permit, amongst other things, incorporation of information by reference to other sources and to require a wider use of websites by parties to an offer. The Code was further amended in January 2010 to require display documents to be published on a website and also amended the list of documents falling within the scope of the Code version of Rule 26. In undertaking its review of the Rules, the Panel has considered these Code amendments and it is proposed that a number of those amendments will be adopted into the Rules.

The proposed new Rules are set out in Annexe 1 while the proposed new Notes are set out in Annexe 2.

The Panel is inviting comments on this consultation paper. Any comments should reach the Panel by 7 October 2011. Comments should be sent in writing to:

Irish Takeover Panel
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Alternatively, comments may be sent by email to: takeoverpanel@eircom.net

Proposed Amendments to Part B of the Rules

1. Incorporation of Information into Documents by Reference to other Sources

In recent years the volume of information that has been printed and sent to shareholders in transactions that are subject to the Rules has increased significantly. Consequently, the Panel has considered whether the Rules should be amended so that the volume of information being sent to shareholders may be reduced. The Panel has concluded that the Rules should be so amended and is therefore proposing that the Rules be amended to permit certain information that is currently required to be included in relevant documents to be incorporated into those documents by reference to another source of information (“incorporation by reference”).

In considering the appropriateness of amending the Rules to permit incorporation by reference, the Panel was cognisant of changes in other regulatory regimes. For example, the Prospectus Regulations (S.I. No. 324 of 2005) contain provisions that allow information that is required to be included in prospectuses to be incorporated by reference. The Panel understands that these provisions are intended to make the process of producing prospectuses simpler and to reduce the related printing and posting costs. The Panel was also mindful of General Principle 2 which provides that the holders of securities of an offeree must have sufficient time and information to enable them to reach a properly informed decision on the offer.

The Rules currently do not permit incorporation by reference. The current practice of the Panel is to permit incorporation by reference only in the case of whitewash circulars and specifically, in relation to financial information, where that information is to be posted to shareholders in the same envelope as the whitewash circular. For example, the Panel does not permit historical financial information to be excluded from an offer document on the basis that the company may have only recently published its annual report and accounts, as shareholders may not have been sent or have retained a copy of the document. Therefore, all such information must currently be reproduced in the offer document.

The Panel believes that the potential benefits of these proposed changes to the Rules would include:

- (i) a reduction in the cost, to offerors and offerees, associated with the printing and posting of relevant documents;
- (ii) a reduction in the duplication of documentation being sent to shareholders; and
- (iii) a reduction in the environmental impact as a consequence of reducing the size of relevant documents.

The Panel is conscious of balancing the potential benefits of reducing the volume of information sent to shareholders and the potential benefits to the parties to an offer of reducing the size of relevant documents with the desire to provide shareholders with sufficient information and time to enable them to reach an informed decision in relation to the merits of an offer. The Panel believes that allowing incorporation by reference does not diminish the information available to shareholders. However, in order to safeguard shareholders' interests and to ensure equivalent treatment of all shareholders it is proposed to amend the Rules to require that:

- (i) all information which is permitted to be incorporated by reference into a relevant document must be published, in "read-only" format, on a website by no later than the date on which the relevant document is published;
- (ii) shareholders would have the right to request hard copies of the information. The relevant document must contain a statement to that effect and a statement that a hard copy of the information will not be sent to the shareholder unless specifically requested. The procedure by which shareholders can apply for hard copies of the information incorporated by reference must be clearly detailed in the relevant document;
- (iii) documents incorporating information by reference contain a consolidated list of all such information and precise details of the address of the website where such information is published; and
- (iv) information that is incorporated by reference in a relevant document be sent to the Panel and the advisers to any parties to the offer in electronic form at the same time as the relevant document is sent to them.

The intention is that the information that will be permitted to be incorporated by reference will be restricted to certain historical financial information which is currently required under Rule 24.2 (*financial and other information on the offeror, the offeree and the offer*) to be included in an offer document. In summary, this will permit an offeror to incorporate by reference in its offer document substantially all of the historical financial information on both the offeror and the offeree (in both securities exchange and cash offers) that is currently required to be disclosed in an offer document pursuant to Rule 24.2. The offeree is not required under Rule 25 (*offeree board circulars*) to include any substantial amount of financial-related material in its circular to shareholders and thus no amendment to that rule is proposed in this consultation paper. However, the Executive is currently considering certain financial-related amendments to Rule 25 which will be included in a subsequent consultation paper.

The proposed amendments are reflected in a new Rule 24.15 set out below:

"RULE 24.15 INCORPORATION OF INFORMATION BY REFERENCE

(a) Except with the consent of the Panel, only the information required to be included in documents under the following rules may be incorporated into the relevant document by reference to another source:

(i) Rules 24.2(a)(i) (1) to (3) and (5) to (7);

(ii) Rules 24.2(a) (ii) (1) and (2); and

(iii) Rules 24.2(a) (iii) and Rule 24.2(c), in so far as they refer to Rules 24.2(a) (i) (1) to (3) and (5) to (7).

(b) Information that is incorporated into a document by reference to another source shall be published on a website by no later than the date on which the document is published. The information published on a website shall be published:

(i) in a form that may be printed, read and retained by the person to whom the document is required to be sent; and

(ii) in a "read-only" format so that it may not be amended or altered in any way.

(c) Every document that incorporates information by reference to another source shall contain a prominent statement that a shareholder or other person to whom it is sent may request a copy of any such information in hard copy form. Every such document shall also state that a hard copy of the information will not be sent to that person unless requested and details shall be provided of how a hard copy may be obtained (including an address in the Republic of Ireland and a telephone number to which requests may be submitted). Any such request shall be made in accordance with the procedure specified in the document, announcement or information and shall provide an address to which the hard copy document, announcement or other information may be sent.

(d) If a person is sent a document which incorporates information by reference to another source and that person requests a copy of the information so incorporated in hard copy form, the party that published the document shall ensure that a copy of the requested information is sent to the relevant person in hard copy form as soon as possible and in any event within two business days of the request being received by that party.

(e) Where a document incorporates information by reference to other sources, a consolidated list, which shall be prominently displayed, of all such information and sources shall be provided in each such document, giving full details of where the information may be located, including details of the address of the website on which the information is published and details of the relevant document, page and, where relevant, paragraph numbers. A general reference to where information may be found shall not be sufficient."

The information referred to in Rule 24.15(a)(i) to (iii) above that may be incorporated by reference is set out below:

(a) information on the offeror if the offer is a securities exchange offer -

- (1) for the last three financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, minority interests, the amount absorbed by dividends, and earnings and dividends per share;
 - (2) a statement of the assets and liabilities shown in the last published audited accounts;
 - (3) a cash flow statement if provided in the last published audited accounts;
 - (4) details relating to items referred to in sub-paragraph (1) in respect of any interim statement or preliminary announcement made since the last published audited accounts;
 - (5) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures;
 - (6) where, because of a change in accounting policy, figures are not comparable to a material extent, this shall be disclosed and the approximate amount of the resultant variation should be stated;
- (b) information on the offeror if the offer is not a securities exchange offer -
- (1) for the last two financial years for which information has been published, turnover and profit or loss before taxation;
 - (2) a statement of the net assets of the offeror shown in the latest published audited accounts;
- (c) information on an offeror which is not a relevant company under section 2(a) of the Act -
the information described in paragraph (a) or (b) above, as appropriate;
- (d) information on the offeree -
information on the offeree on the same basis as set out in paragraph (a) above.

It is proposed that Panel consent may be sought for additional information to be incorporated by reference. However, the Panel believes that it would not be desirable for relevant documents to become a list of cross-references and that the Panel should be cognisant of this when considering submissions to grant consent for additional information to be incorporated by reference.

The Panel believes that the information that is incorporated by reference into relevant documents should be easily and quickly accessible by shareholders and other relevant persons. Therefore, the Panel is proposing to add the following Note on Rule 24.15.

NOTES ON RULE 24.15

"1. Accessibility to information

Information that is incorporated by reference to another source should be capable of being accessed by shareholders as quickly and easily as possible. Source documents from which information is incorporated by reference into a document should be published on a website in separate electronic files rather than in one large electronic file. If the Panel permits non-financial information to be incorporated into a document by reference to another source, the source information in respect of a particular rule should comprise a single document (for example, an extract from a prospectus) and should not be drawn from multiple source documents (for example, extracts from several documents published over a period of years). The reference to the website on which information incorporated by reference to another source is published should be to the actual website page on which the relevant information is published and not simply to a website page that requires a shareholder to search through a number of other website pages before locating the information. Offer-related sections of an offeror or offeree website should be capable of being accessed from the relevant party's home page and the link to the offer-related information should be prominently displayed."

It is also proposed to add Note 2 below as a prompt to relevant parties as to when to consult the Panel if it is proposed to restrict access to a website or part of a website maintained for the purposes of complying with Rule 24.15. In practice, this is likely to arise only in the case of non-EEA countries where the laws or regulations of such countries may preclude the offeror or the offeree from granting access unless substantial amendments are made to the relevant information and documentation. It is also proposed to amend Rule 2.5(a) of Part A of the Rules, as set out in section 2 below, so as to apply the rule to documents and information made available on a website.

NOTES ON RULE 24.15

"2. Restricting access to websites

See Rule 2.5(a) of Part A of the Rules."

2. Requirement to Publish Information on a Website

In recent years there has been an ever increasing use of websites by public companies as a tool for communicating with shareholders, potential investors and other interested persons. Many companies are required to maintain a website in order to comply with applicable regulatory requirements. For example, the Transparency Directive (2004/109/EC) and the Shareholders Rights Directive (2007/36/EC) require the use of websites by companies. The AIM Rules for Companies require that a company whose securities are admitted to trading on AIM maintain a website on which key information about the company, its business and its management should be disclosed.

The Rules currently make no express reference to the use of websites and there is no requirement to publish any document or information in relation to an offer on a website although many offerors and offerees publish on their respective websites documents and information relating to the offer. However, Rule 19.8 (*electronic communications*) states that Rule 19 (*communications*) shall apply to electronic communications as it applies to communications in other forms. The effect of this is that any material relating to an offer which is published on a website by or on behalf of a party must comply with, amongst other things, the standards of care in Rule 19.1, must contain a directors'

responsibility statement under Rule 19.2 and must also comply with Rule 19.3 (*avoidance of misleading statements*). Rule 19.7 (*distribution and availability of documents and announcements*) also applies to offer-related material published on a website and consequently copies of such material must be furnished, at the time of release, to the Panel and to the advisers to all other principals concerned with the offer.

The posting of information on a website will not satisfy the obligation under Rule 20.1 (*equality of information to shareholders*) to notify all offeree shareholders of material new information relating to an offer at the same time and in the same manner.

The Panel believes that the Rules should be amended to require a party to an offer to publish on a website copies of all documents and information published by it or on its behalf in relation to an offer. That website would form a single point of reference for all such information and would, in the opinion of the Panel, make it easier for shareholders and other interested parties to obtain information in relation to offers quickly and efficiently. Documents, announcements and information published following the end of the offer period will not be required to be published on a website.

Most parties to an offer are likely to have an existing website and, in any event, a website may be set up inexpensively and relatively quickly. If a party to an offer does not have its own website and proposes to use a website belonging to a third party, consultation with the Panel will be required. The Panel is of the view that there is no problem in principle with a party to an offer using a website belonging to a third party. However, it considers that consultation would ensure that an appropriate third party website is used.

It is proposed that all documents, announcements and information published in relation to an offer must contain a statement providing details of the website on which all such information will be published. Furthermore, it is proposed that offer-related documents, announcement and information would continue to be available on a website during the course of an offer.

In putting forward these proposed amendments the Panel has considered whether there should be a requirement that a directors' responsibility statement pursuant to Rule 19.2 be posted on the gateway to the relevant website. The Panel has concluded that, as all documents, announcements, press releases and advertisements published in connection with an offer must under Rule 19.2 contain a directors' responsibility statement, it is unnecessary to require a further responsibility statement on the gateway to the relevant website containing such information. As regards Rule 24.15, it should be noted that it is only that information which is being incorporated by reference for which directors are required to take responsibility and not the entire contents of the source document. It should also be noted that Rule 19.2 does not require directors to take responsibility for the contents of those documents required under Rule 26 to be on display and which it is proposed (in section 3 below) should also be required to be made available on a website, other than those documents referred to in Rule 26(b) that are being published in connection with the offer. Having regard to the above, the Panel is not proposing to amend Rule 19.2.

The proposed new rules will contain certain limited exemptions from the requirement to publish documents on a website. These exemptions are set out in Rule 19.9(b) below. The rationale for permitting such exemptions is based on the view that certain announcements should not be required to

be published on a website as they are likely to be issued relatively frequently during offer periods in the ordinary course and are therefore likely to be of less interest to shareholders and other interested persons than other announcements published during this period. In addition, the Panel believes that any person who wishes to review these announcements would be able to do so quickly and easily via a Secondary Information Provider.

It is not intended that the publication of documents, announcements and information relating to an offer on a website would satisfy the requirement under Rule 20.1 to make information about companies involved in an offer available to all offeree shareholders in the manner and at the same time. It is proposed to state this in the new Rule 19.9(g) (see below).

Pursuant to the new Rule 24.15(b), information that is incorporated into a document by reference to another source must be published on a website by no later than the date on which the document is published. Furthermore, it is proposed that documents required to be put on display pursuant to Rule 26 would also be required to be published on a website (see Rule 26(b) in section 3 below as proposed to be amended).

The proposed amendments (excluding those referred to in the previous paragraph) are reflected in a new Rule 19.9 set out below.

**“RULE 19.9 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION
REQUIRED TO BE PUBLISHED ON A WEBSITE**

(a) Subject to paragraph (b), if, during an offer period, an offeror or the offeree, or any person on its behalf:

- (i) despatches a document or information in relation to an offer to shareholders in accordance with the Rules; or*
- (ii) publishes an announcement related to the offer by sending it to a Regulatory Information Service,*

the offeror or the offeree as appropriate shall, as soon as possible and in any event by no later than 12.00 noon on the following business day, ensure that a copy is published on a website.

(b) Copies of the following announcements in relation to notifications made pursuant to the rules of other regulatory regimes are not required under paragraph (a) to be published on a website:

- (i) transactions by directors, secretaries or other persons discharging managerial responsibilities in respect of a company;*
- (ii) the acquisition or disposal of major shareholdings; and*
- (iii) disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares in issue (including treasury shares).*

(c) Copies of all documents, announcements and information required to be published on a website under paragraph (a) shall continue to be made available on a website free of charge during the course of the offer.

(d) All documents, announcements and information published in relation to an offer by an offeror or the offeree in the manner described in paragraph (a) above shall contain a statement providing details of the website on which a copy will be published.

(e) An offeror and the offeree shall each use its own website when publishing copies of documents, announcements and information in accordance with paragraph (a). If an offeror or the offeree does not have its own website, or proposes to use a website maintained by a third party for that purpose, it shall consult the Panel.

(f) All documents, announcements and information published on a website in accordance with paragraph (a) shall be published in a "read-only" format so that it may not be amended or altered in any way.

(g) The publication of offer-related documents, announcements and information on a website shall not satisfy the obligation of the party concerned under Rule 20.1 to make information about companies involved in an offer equally available to all offeree shareholders as nearly as possible at the same time and in the same manner ."

It is proposed to add the following notes to Rule 19.9. Notes 1 and 2 are cross-references to other rules which require certain additional information and documents not referred to in Rule 19.9 to be published on a website. Note 3 is a prompt to relevant parties as to when to consult the Panel if it is proposed to restrict access to a website or part of a website maintained for the purposes of complying with Rule 19.9(a) (see also below the proposed amendments to Rule 2.5(a) of Part A of the Rules). In practice, this is likely to arise only in the case of non-EEA countries where the laws or regulations of such countries may preclude the offeror or the offeree from granting access unless substantial amendments are made to the relevant information and documentation.

"NOTES ON RULE 19.9

1. Information incorporated by reference

See Rule 24.15(b).

2. Documents to be on display

See Rule 26.

3. Restricting access to websites

See Rule 2.5(a) of Part A of the Rules."

A party to an offer who is required to publish offer-related documents, announcements and information on a website may need advice in overseas jurisdictions in relation to local securities laws

and regulations. In many cases, applicable securities laws and regulations may need to be complied with, for example, by ensuring that appropriate disclaimers are added to the gateway to the website or by restricting access to websites from certain jurisdictions. If a party to an offer proposes to restrict shareholders in overseas jurisdictions from accessing a website or any part of it, in the Panel's view Rule 2.5(a) (*despatch of documents or information*) of Part A of the Rules should apply. In summary, this would require the relevant party to consult with the Panel if it is proposed that the part of the website concerned would not be made available to offeree shareholders representing in aggregate 3% or more in number or 3% or more in value of any class of security the subject of the offer. For this purpose, it is proposed that Rule 2.5(a) be amended, as indicated below, so that it applies to the making available of documents and information on a website as well as to their despatch.

"RULE 2.5 DESPATCH OR MAKING AVAILABLE ON A WEBSITE OF DOCUMENTS OR INFORMATION

(a) Where the Rules, or the Panel in the exercise of its functions, ~~require despatch of documents or information~~ require the despatch or the making available on a website of documents or information to holders of securities of a relevant company, the requirement shall not be deemed unfulfilled by reason only of the non-receipt by any holder of such material due to:

(i) the registered address of such holder being in a country or territory outside the EEA to which the transmission or delivery of the material is precluded by the laws of a Member State or of such country or territory;

(ii) despatch to only one of registered joint holders;

(iii) a bona fide error in the registered address of such holder; or

(iv) failure by postal or other carriers to effect delivery due to circumstances outside the control of the party obliged to despatch the relevant material;

provided that where the person responsible for ~~the despatch of the relevant material~~ the despatch or the making available of the relevant material knows that it has not been or will not be delivered or made available to 3% or more in number of the addressees or to addressees representing in aggregate 3% or more in value of any class of security the subject of an offer, that person shall consult the Panel, which may specify further action to be taken."

3. Rule 26 Documents to be on display

As stated above, the requirement that each offeror and offeree publish its offer-related information on its website would form a single point of reference for such information and would, in the opinion of the Panel, make it easier for shareholders and other interested parties to obtain information in relation to offers quickly and efficiently. Consistently with this approach, the Panel is proposing to amend Rule 26 (*documents to be on display*) to require that the documents prescribed under that rule to be available for inspection be also published on the website of the offeror or the offeree, as appropriate.

This would greatly increase the availability of those documents, which the Panel believes would be in the interests of shareholders.

Currently, Rule 26 requires the offeror and the offeree to make available copies of certain specified documents for inspection from the time the offer document or (as the case may be) the first response circular is published until the end of the course of the offer. Such documents must be available for inspection at an address in the city of Dublin or such other place as the Panel may agree, and access to the documents must be given to any person who requests it. The reason for requiring these documents to be available for inspection stems from the view that they may contain information that is relevant to offeree shareholders endeavouring to determine the merits or otherwise of an offer.

The Panel has noted that when the UK Panel initially proposed to make similar changes to its Rule 26, certain concerns were raised during the consultation process. Essentially, the concerns were that the proposed amendments would fundamentally change the means by which display documents may be reviewed; commercially sensitive information would become more widely available; and the Takeover Code would be inconsistent with the equivalent provisions of the FSA's Prospectus Rules. (While the latter rules require summaries of material contracts to be included in the prospectus, copies of the actual contracts are not required to be put on display). Ultimately, the UK Panel decided that Rule 26 documents should be published on a website but it also decided to delete from the list of such documents offeree directors' service contracts and material contracts (other than those contracts entered into in connection with the offer) that are summarized in the offer document and the first response circular pursuant to the Code Rules 24 and 25 respectively. It would appear that the main reason for that deletion was the fact that because of the inconsistency that existed in this area between the Code and the FSA's Prospectus Rules, and in certain cases the UK Listing Authority's Listing Rules, offeree shareholders would in some cases be provided with more information under the Code rules in relation to offeree material contracts and offeree directors' service contracts than when the offeree company was first listed or when offeree shareholders are requested to consent to the disposal of a significant part of the offeree's business (i.e. in a Class 1 transaction). The UK Panel concluded that, whilst in the case of an offer it may be possible to justify a higher standard of disclosure in relation to matters that have a direct bearing on the offer (for example, it may be important for a shareholder to be able to review in full a copy of an implementation agreement or an irrevocable commitment to accept the offer obtained by an offeror), it was more difficult to justify requiring copies of material contracts that are not related to the offer and offeree directors' service contracts to be put on display in full in view of the similarity of the investment decisions that would be taken by a shareholder in those circumstances.

No change was made to the requirement under the Code to provide summaries of offeree directors' service contracts and all material contracts (excluding those entered into in the ordinary course of business) in the offer document or first response circular, as appropriate.

The requirements with regard to documents on display under the Prospectus Rules and the Listing Rules applicable in this jurisdiction are the same as those applicable under the FSA's Prospectus Rules and the UK Listing Authority's Listing Rules. Consequently, the Panel is of the view that the concerns raised during the UK Panel consultation exercise are equally relevant in this jurisdiction. Cognisant of these concerns, the Panel is proposing to amend the list of documents required to be put on display under Rule 26. The effect of the proposed amendments would be to no longer require the display of

copies of offeree directors' service contracts or material contracts, other than directors' service contracts and material contracts entered into in connection with the offer. These amendments would mirror the amendments made to Rule 26 in the Code. As in the Code, there will continue to be a requirement under the Rules to provide summaries of offeree company directors' service contracts and all material contracts (excluding those entered into in the ordinary course of business) in the offer document or first response circular, as appropriate.

The proposed amendments are reflected in Rule 26 set out below.

“ RULE 26. DOCUMENTS TO BE ON DISPLAY

(a) Except with the consent of the Panel, the offeror and the offeree shall each make available for inspection and publish on a website copies of the documents specified in paragraph (b) ~~for inspection from the time at which the offer document or (as the case may be) the first response circular is published until the end of the course of the offer. The offer document and the first response circular shall each state which documents are so available and the address (being a place in the City of Dublin and/or such other place as the Panel may agree or direct) where inspection can be made and the address of the website on which the documents are published. Additionally, the offeror and the offeree shall each make available for inspection at the appropriate addresses and on the appropriate website, from the date of despatch of such document or announcement until the end of the course of the offer, copies of each document despatched to shareholders of the offeree in relation to the offer and of each announcement in relation to the offer made by the offeror or, as the case may be, the offeree. Access to the hard copy form of documents on display shall be given during normal business hours on each business day during the inspection period specified above to any person who requests it.~~

(b) The following documents shall be made available for inspection and published on a website in accordance with paragraph (a):

(i);

(ii);

~~(iii) — in the case of the offeree, all service contracts of directors of the offeree which have more than 12 months to run;~~

~~(iv) (iii) any every report, letter, valuation or other document, any part of which is exhibited or referred to in any document issued by or on behalf of the offeror or the offeree, as appropriate, other than the service contracts of the offeree directors and any material contracts that are not entered into in connection with the offer;~~

~~(v) (iv);~~

~~(vi) (v) all material contracts entered into by the offeror or the offeree, or any of their respective subsidiaries, in connection with the offer (as required by Rules 24.2(a)(i) (10) and 25.6);~~

~~(vii)~~ (vi);

~~(viii)~~ (vii);

~~(ix)~~(viii) ...;

~~(x)~~ (ix);

~~(xi)~~ (x);

~~(xii)~~ (xi) *all derivative contracts which in whole or in part have been disclosed under Rule 24.3(a) or (c) or 25.3(a) or (c) or in accordance with Rule 8.1. Documents in respect of the last mentioned shall be made available for inspection and published on a website from the time the offer document or, as appropriate, the first response circular is published or from the time of disclosure, whichever is the later;*

~~(xiii)~~ (xii);

(xiii) in the case of the offeror, the offer document and every revised offer document;

(xiv) in the case of the offeree, the offeree board circular and the response circular of the offeree board concerning every revised offer; and

~~(xiv)~~ (xv) *such other documents as the Panel may require to be displayed and published on a website in the circumstances of a particular case."*

Consistently with the approach adopted in Rule 19.9 above, it is proposed to add the following note to Rule 26:

"NOTE ON RULE 26

See Rule 19.9 and Rule 2.5(a) of Part A of the Rules."

4. Miscellaneous Amendments

A couple of minor amendments are also being proposed and these are set out below. Rule 19.6 (*interviews*) is to be amended in paragraph (a), as indicated below, to ensure that all interviews are caught by the rule regardless of the medium used. A new paragraph (e) is to be added to Rule 19.7 (*distribution and availability of documents and announcements*) as a consequence of the proposed changes in relation to incorporation by reference to provide that electronic copies of all information incorporated by reference is sent to the Panel and to the advisers to the offeror and the offeree.

RULE 19.6 INTERVIEWS

“(a) An offeror or the offeree or any associate of either of them who, during the course of the offer, is interviewed in connection with the offer or contemplated offer on radio, television or any other medium shall use all reasonable endeavours to ensure that the sequence of the interview is not broken by the insertion of comments or observations by others which were not made in the course of the interview.”

RULE 19.7 DISTRIBUTION AND AVAILABILITY OF DOCUMENTS AND ANNOUNCEMENTS

“(a) to (d)

(e) Where information is incorporated into any of the above documents by reference to another source of information, the party who releases the document shall send a copy of the information so incorporated to the Panel and the advisers referred to in paragraph (a) in electronic form at the same time as it sends a copy of that document to them in accordance with this rule.”

ANNEXE 1

FULL TEXT OF PROPOSED NEW RULES

IRISH TAKEOVER PANEL ACT, 1997, TAKEOVER (AMENDMENT) RULES, 2011

1. CITATION, CONSTRUCTION AND COMMENCEMENT

1.1 These Rules may be cited as the Irish Takeover Panel Act, 1997, Takeover (Amendment) Rules, 2011.

1.2 These Rules and the Irish Takeover Panel Act, 1997, Takeover Rules, 2007 to 2008, shall be construed together as one and may be cited together as the Irish Takeover Panel Act, 1997, Takeover Rules, 2007 to 2011.

1.3 These Rules shall come into operation on _____ 2011.

1.4 These Rules shall not apply to any transaction which is in being on the date on which these Rules come into operation.

2. INTERPRETATION

2.1 In these Rules, the “**2007 Rules**” means the Irish Takeover Panel Act, 1997, Takeover Rules, 2007, as amended by the Irish Takeover Panel Act, 1997, Takeover (Amendment) Rules, 2008 and the Irish Takeover Panel Act, 1997, Takeover (Amendment) (No. 2) Rules, 2008 .

2.2 Unless the context otherwise requires, a reference in these Rules to a rule or an appendix shall be construed as a reference to a rule of, or (as the case may be) an appendix to, the rules contained in, Part B of the 2007 Rules.

3. AMENDMENT OF PART A OF THE 2007 RULES

Rule 2.5 of Part A of the 2007 Rules is hereby amended by:

(a) the substitution of “**DESPATCH OR MAKING AVAILABLE ON A WEBSITE OF DOCUMENTS OR INFORMATION**” as the title of the rule;

(b) the substitution in paragraph (a) of “require the despatch or the making available on a website of documents or information” for “require despatch of documents or information”; and

(c) the substitution in paragraph (a) of “the despatch or making available of the relevant material knows that it has not been or will not be delivered or made available” for “the despatch of the relevant material knows that it has not been or will not be delivered”.

4. AMENDMENT OF PART B OF THE 2007 RULES

RULE 19.6 INTERVIEWS

4.1 Rule 19.6 is hereby amended by the substitution in paragraph (a) of “radio, television or any other medium” for “radio or television”.

RULE 19.7 DISTRIBUTION AND AVAILABILITY OF DOCUMENTS AND ANNOUNCEMENTS

4.2 Rule 19.7 is hereby amended by the insertion of the following new paragraph (e) after paragraph (d):

“(e) Where information is incorporated into any of the above documents by reference to another source of information, the party who releases the document shall send a copy of the information so incorporated to the Panel and the advisers referred to in paragraph (a) in electronic form at the same time as it sends a copy of that document to them in accordance with this rule”.

RULE 19 COMMUNICATIONS

4.3 Rule 19 is hereby amended by the insertion after Rule 19.8 of the following new Rule 19.9:

“19.9 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION REQUIRED TO BE PUBLISHED ON A WEBSITE

(a) Subject to paragraph (b), if, during the offer period, an offeror or the offeree, or any person on its behalf:

(i) despatches a document or information in relation to an offer to shareholders in accordance with the Rules; or

(ii) publishes an announcement (whether related to the offer or not) by sending it to a Regulatory Information Service,

the offeror or the offeree as appropriate shall, as soon as possible and in any event by no later than 12.00 noon on the following business day, ensure that a copy is published on a website.

(b) Copies of the following announcements in relation to notifications made pursuant to the rules of other regulatory regimes are not required under paragraph (a) to be published on a website:

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

- (ii) the acquisition or disposal of major shareholdings; and
- (iii) disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares in issue (including treasury shares).

(c) Copies of all documents, announcements and information required to be published on a website under paragraph (a) shall continue to be made available on a website free of charge during the course of the offer.

(d) All documents, announcements and information published in relation to an offer by an offeror or the offeree in the manner described in paragraph (a) above shall contain a statement providing details of the website on which a copy will be published.

(e) An offeror and the offeree shall each use its own website when publishing copies of documents, announcements and information in accordance with paragraph (a). If an offeror or the offeree does not have its own website, or proposes to use a website maintained by a third party for that purpose, it shall consult the Panel.

(f) All documents, announcements and information published on a website in accordance with paragraph (a) shall be published in a “read-only” format so that it may not be amended or altered in any way.

(g) The publication of offer-related documents, announcements and information on a website shall not satisfy the obligation of the party concerned under Rule 20.1 to make information about companies involved in an offer equally available to all offeree shareholders as nearly as possible at the same time and in the same manner .”

RULE 24 OFFEROR DOCUMENTS

4.4 Rule 24 is hereby amended by the insertion after Rule 24.14 of the following new Rule 24.15:

“RULE 24.15 INCORPORATION OF INFORMATION BY REFERENCE

(a) Except with the consent of the Panel, only the information required to be included in documents under the following rules may be incorporated into the relevant document by reference to another source:

- (i) Rules 24.2(a)(i) (1) to (3) and (5) to (7);
- (ii) Rules 24.2(a)(ii) (1) and (2); and
- (iii) Rules 24.2(a)(iii) and Rule 24.2(c), in so far as they refer to Rules 24.2(a)(i) (1) to (3) and (5) to (7).

(b) Information that is incorporated into a document by reference to another source shall be published on a website by no later than the date on which the document is published. The information published on a website shall be published:

(i) in a form that may be printed, read and retained by the person to whom the document is required to be sent; and

(ii) in a “read-only” format so that it may not be amended or altered in any way.

(c) Every document that incorporates information by reference to another source shall contain a prominent statement that a shareholder or other person to whom it is sent may request a copy of any such information in hard copy form. Every such document shall also state that a hard copy of the information will not be sent to that person unless requested and details shall be provided of how a hard copy may be obtained (including an address in the Republic of Ireland and a telephone number to which requests may be submitted). Any such request shall be made in accordance with the procedure specified in the document, announcement or information and shall provide an address to which the hard copy document, announcement or other information may be sent.

(d) If a person is sent a document which incorporates information by reference to another source and that person requests a copy of the information so incorporated in hard copy form, the party that published the document shall ensure that a copy of the requested information is sent to the relevant person in hard copy form as soon as possible and in any event within two business days of the request being received by that party.

(e) Where a document incorporates information by reference to other sources, a consolidated list, which shall be prominently displayed, of all such information and sources shall be provided in each such document, giving full details of where the information may be located, including details of the address of the website on which the information is published and details of the relevant document, page and, where relevant, paragraph numbers. A general reference to where information may be found shall not be sufficient.

“RULE 26 DOCUMENTS TO BE ON DISPLAY

4.5 The 2007 Rules are hereby amended by the substitution for Rule 26, under the same heading, of the following new rule:

“(a) Except with the consent of the Panel, the offeror and the offeree shall each make available for inspection and publish on a website copies of the documents specified in paragraph (b) from the time at which the offer document or (as the case may be) the first response circular is published until the end of the course of the offer. The offer document and the first response circular shall each state which documents are so available and the address (being a place in the City of Dublin and/or such other place as the Panel may agree or direct) where inspection can be made and the address of the website on which the documents are published. Access to the hard copy form of documents on display shall be given during normal business hours on each business day during the inspection period specified above to any person who requests it.

(b) The following documents shall be made available for inspection and published on a website in accordance with paragraph (a):

(i) memorandum and articles of association of the offeror or the offeree, as appropriate, or equivalent documents;

(ii) audited, consolidated accounts of the offeror or the offeree, as appropriate, for the last two financial years for which these have been published;

(iii) every report, letter, valuation or other document, any part of which is exhibited or referred to in any document issued by or on behalf of the offeror or the offeree, as appropriate, other than the service contracts of the offeree directors and any material contracts that are not entered into in connection with the offer;

(iv) written consents of advisers and consultants (as required by Rules 24.2(f) and 25.1(b));

(v) all material contracts entered into by the offeror or the offeree, or any of their respective subsidiaries, in connection with the offer (as required by Rules 24.2(a)(i) (10) and 25.6);

(vi) if a profit forecast has been made:

(1) the reports of the auditors or consultant accountants and of the financial advisers (as required by Rule 28.3);

(2) the letters giving the consent of the auditors or consultant accountants and of the financial advisers to the issue of the relevant document with the report in the form and context in which it is included or, if appropriate, to the continued use of the report in a subsequent document (as required by Rules 28.4 and 28.5);

(vii) if an asset valuation has been made:

(1) the valuation certificate and associated report or schedule contained details of the aggregate valuation (as required by Rule 29.5);

(2) a letter stating that the valuer has given and not withdrawn his or her consent to the publication of his or her valuation certificate in the relevant document (as required by Rule 29.5);

(viii) any document evidencing an irrevocable commitment or a letter of intent;

(ix) if the Panel has given consent to aggregation of dealings, a full list of all dealings;

(x) in the case of the offeror, documents relating to the financing arrangements for the offer if such arrangements are described in the offer document in compliance with the third sentence of Rule 24.2(d);

- (xi) all derivative contracts which in whole or in part have been disclosed under Rule 24.3(a) or (c) or 25.3(a) or (c) or in accordance with Rule 8.1. Documents in respect of the last mentioned shall be made available for inspection and published on a website from the time the offer document or, as appropriate, the first response circular is published or from the time of disclosure, whichever is the later;
- (xii) if the Panel has given consent to the offeree board to enter into a contact or arrangement of the kind described in Rule 21.2, a copy of the contract or arrangement;
- (xiii) in the case of the offeror, the offer document and every revised offer document;
- (xiv) in the case of the offeree, the offeree board circular and the response circular of the offeree board concerning every revised offer; and
- (xv) such other documents as the Panel may require to be displayed and published on a website in the circumstances of a particular case.”

5. SUBSTANTIAL ACQUISITION RULES

Neither section 14(2) of the Interpretation Act 2005 nor Rule 2.6(d) of Part A of the 2007 Rules (as that rule is applied to the Substantial Acquisition Rules) shall, by virtue of the making of these Rules, apply to the reference to “the Irish Takeover Panel Act, 1997, Takeover Rules, 2007” contained in the definition of “Takeover Rules” in Rule 2 of the Substantial Acquisition Rules.

Executed this day of 2011

PRESENT when the Seal of
IRISH TAKEOVER PANEL
was affixed hereto:

ANNEXE 2

PROPOSED NEW NOTES ON RULES

1. Insert the following notes on Rule 19.9:

“NOTES ON RULE 19.9

1. *Information incorporated by reference*

See Rule 24.15(b).

2. *Documents to be on display*

See Rule 26.

3. *Restricting access to websites*

See Rule 2.5(a) of Part A of the Rules.”

2. Insert the following notes on Rule 24.15:

“NOTES ON RULE 24.15

1. *Accessibility to information*

Information that is incorporated by reference to another source should be capable of being accessed by shareholders as quickly and easily as possible. Source documents from which information is incorporated by reference into a document should be published on a website in separate electronic files rather than in one large electronic file. If the Panel permits non-financial information to be incorporated into a document by reference to another source, the source information in respect of a particular rule should comprise a single document (for example, an extract from a prospectus) and should not be drawn from multiple source documents (for example, extracts from several documents published over a period of years). The reference to the website on which information incorporated by reference to another source is published should be to the actual website page on which the relevant information is published and not simply to a website page that requires a shareholder to search through a number of other website pages before locating the information. Offer-related sections of an offeror or offeree website should be capable of being accessed from the relevant party's home page and the link to the offer-related information should be prominently displayed.

2. Restricting access to websites

See Rule 2.5(a) of Part A of the Rules.”

3. Insert the following note on Rule 26:

“NOTE ON RULE 26

See Rule 19.9 and Rule 2.5(a) of Part A of the Rules.”