IRISH TAKEOVER PANEL

CONSULTATION PAPER

PROPOSALS TO AMEND VARIOUS TAKEOVER RULES

1 February 2012

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Introduction

This paper sets out various proposals to amend the Irish Takeover Act 1997, Takeover Rules, 2007 to 2008 (the *"Takeover Rules"* or the *"Rules"*).

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

1. Rule 5.2 – it is proposed to amend Rule 5.2(a)(iv)(3) so as to permit a person who has made a non-preconditional Rule 2.5 announcement to acquire voting securities of a relevant company or rights over such securities after the first closing date of that offer or any competing offer has passed. Under the current rule, an offeror is restricted in making such acquisitions notwithstanding that the first closing date of the offer has passed if there is competition or other governmental or regulatory constraints on the implementation of such an offer.

2. Rule 11 – the rule requires that where an offeror or any person acting in concert with it acquires any securities of the offeree during the offer period or where they acquire 10% or more of the securities of the offeree in the 12 months prior to the commencement of the offer period, the offer to be made by the offeror must be in cash or accompanied by a cash alternative. However, the rule does not require the offeror to make a securities offer where securities have been acquired in exchange for securities. The Panel is of the view that a new Rule 11.2 should be introduced setting out the circumstances in which a securities exchange offer is required.

3. Rule 16 – the rule provides that, except with the consent of the Panel, neither an offeror nor any person acting in concert it may make arrangements with offeree shareholders or with persons interested in relevant securities of the offeree if there would be attached to such arrangements a term favourable to such shareholder or such person which would not be extended to all shareholders. Note 4 on Rule 16 sets out some guidance in relation to when Panel consent may be granted where the arrangements relate to management incentivisation. Difficulties may arise for practitioners in interpreting Rule 16, particularly with regard to the requirements of the Panel when it is considering granting consent to incentivisation measures which do not involve offering the offeree management securities of the offeror. The Panel is proposing certain amendments to provide some additional clarity and to ensure a consistent approach to the application of the rule. It is proposed that a new Rule 16.2 (which will essentially replace Note 4 on Rule 16) will set out when (1) public disclosure of the arrangements, (2) the fair and reasonable opinion of the independent adviser to the offeree, and (3) offeree shareholder approval of the arrangements will be required if the offeror or any party acting in concert with it proposes to enter into arrangements with offeree management which will not be extended to all offeree shareholders.

4. Rule 20.2 ï this rule sets out the circumstances in which an offeree, irrespective of its preference, must promptly provide information to a competing offeror if such information or substantially the same information has previously been given to another offeror. The rule makes no reference to whether an offeree can impose conditions on the competing offeror receiving the information if such conditions or similar conditions were imposed on the first offeror. It is proposed that Rule 20.2 be amended to set out the types of conditions that an offeree can impose on any information being made available to an offeror. The rule will also set out how it will be applied in reverse takeover and merger situations.

5. Rule 25 ï under Rule 24.2(c) the offeror is required to include in the offer document details of all known material changes in the financial or trading position of the offeree subsequent to its last published audited accounts or alternatively a statement that there are no known material changes must be included. Rule 25 (offeree board circulars) contains no such requirement in relation to the offeree board. It is proposed to add a new Rule 25.8 to require the offeree board, in its first response circular, to include details of any known material changes in its financial or trading position since its last published audited accounts or alternatively a statement that there are no known material changes.

6. Rule 31.5 and Rule 32.2 ï ñ*no extension*ò and ñ*no increase*ò statements respectively may be set aside only if the offeror has specifically reserved the right not to be bound in certain circumstances, and those circumstances occur, or the Panel consents to the offeror not being bound by the statement. Rule 31.9 prohibits the offeree board from releasing material new information after Day 39 of the offer timetable. Given that with Panel consent material new information may be released after Day 39, in order to minimise the period of uncertainty between the offeree announcement and the offeror clarifying its intentions, the Panel is proposing to amend Rule 31.5 and Rule 32.2 so that the offeror will be required to inform offeree shareholders whether it will extend/increase its offer as soon as possible after the offeree announcement. A clarificatory amendment to both those rules is also proposed.

7. Deletion of á*associate*ôï there is significant overlap in the Rules between the definition of áassociateôand the presumptions of concertedness. The Panel is of the view that the term áassociateôis no longer necessary and could be deleted from the Rules without any resulting material loss of market transparency or shareholder protection.

8. Market-makers and fund managers ï the paper proposes to introduce into the Rules the term ñ*exempt principal trader*ò and to remove from the Rules the term ñ*exempt market-maker*ò. Various other amendments are also being proposed which relate to, or are connected with, the present exempt system under the Rules relating to market-makers and fund managers.

9. This paper also sets out various miscellaneous amendments in relation to Rules 15, 26, 27.1 and 31.8. It is also proposed to amend Note 7 on Rule 9.1 and to add some new notes, including notes on Rules 16 and 20.1 which will provide guidance on the approach which the Panel may take in relation to debt syndications undertaken during an offer period.

In undertaking its review of the Rules, the Panel has considered various Code amendments adopted by the Panel on Takeovers and Mergers in the UK.

Full sets of the proposed new rules and notes are set out in Appendices 3 and 4 to this paper respectively. Such rules and notes, if adopted, may be modified to reflect changes that may be made to the rules and notes pursuant to Consultation Papers 1 and 2.

Unless otherwise indicated, references to rules are to rules in Part B of the Rules.

The Panel is inviting comments on this consultation paper. Any comments should reach the Panel by 16 March 2012. Comments should be sent in writing to:

Irish Takeover Panel
Lower Ground Floor
76 Merrion Square
Dublin 2

FAX: 353 1 6789289

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

1 February 2012

Proposed Amendments to the Takeover Rules

1. Rule 5.2 - Exceptions to Restrictions on Acquisitions

Except as permitted by Rule 5.2, Rule 5.1 prohibits a person, and any person acting in concert with that person, from acquiring securities or rights over securities of a relevant company if, following such acquisition, that person, together with any persons acting in concert with them, would hold, in aggregate, securities and rights over securities representing 30% or more of the voting rights of the company. The rule also prohibits a person, and any person acting in concert with that person, who hold, in aggregate, securities or rights over securities representing 30% or more (but, in the case of a "single holder", not more than 50%) of the voting rights of the company, from acquiring any securities or rights over securities if such an acquisition would result in such persons acquiring securities or rights over securities representing 0.05% or more of the voting rights in that company in any 12 month period.

The purpose of the restrictions in Rule 5.1 is to provide an opportunity to the board of the offeree to consider an offer and give advice to its shareholders before control can be acquired or consolidated. Rule 5.1 achieves this by regulating the speed at which securities and rights over securities can be acquired.

Rule 5.2(a) sets out certain exceptions to the restrictions in Rule 5.1, namely:

(i) an acquisition of securities (but not rights over securities) from a single holder if it is the only acquisition by the person concerned within any period of 7 days; however, this exception will not apply if that person has announced a firm intention to make an offer for the company concerned and that offer has not lapsed);

(ii) an acquisition by an offeror immediately prior to its announcement of a firm intention to make an offer for the company concerned, provided it will be a publicly recommended offer or the acquisition is made with the offeree board's approval and is conditional upon the announcement of the offer;

(iii) an acquisition by the offeror immediately after its announcement of a firm intention to make an offer, provided such acquisition satisfies a pre-condition to the making of the offer and the offer has been publicly recommended by, or the acquisition has been made with the agreement of, the offeree board;

(iv) an acquisition by the offeror after its announcement of a firm intention to make an offer for the company concerned, provided that the making

of that offer is not, at the time of the acquisition, subject to a pre-condition and:

(1) the acquisition is made with the agreement of the offeree board; or

(2) that offer, or any competing offer, has been publicly recommended for acceptance by the offeree board; or

(3) either:

(A) the first closing date of that offer has passed and there is no constraint on the offer under the Competition Act 2002, and no other governmental or regulatory clearance is outstanding and it has been established that no proceedings will be initiated by the European Commission or by a competent authority pursuant to the European Merger Regulation or that the offer does not come within the scope of that Regulation; or

(B) the first closing date of any competing offer has passed and there is no constraint on the competing offer under the Competition Act, and no other governmental or regulatory clearance is outstanding and it has been established that no proceedings will be initiated by the European Commission or by a competent authority pursuant to the European Merger Regulation or that the competing offer does not come within the scope of that Regulation; or

(4) that offer is unconditional in all respects; or

(v) the acquisition is by way of acceptance of an offer made in accordance with the Rules.

In effect, Rule 5.2(a)(iv)(3) does not permit acquisitions until the first closing date of the offer or of a competing offer has passed and no competition or other governmental or regulatory clearance is outstanding in respect of the offer. The Panel has some concerns that the narrowness of this element of the rule could result in its unsatisfactory operation in certain circumstances.

The original purpose of extending the restrictions of Rule 5.1 beyond the first closing date for an offer was to prevent the offeror taking advantage of any uncertainty created by potential difficulties associated with obtaining competition or other governmental or regulatory clearances. However, the restriction prior to obtaining such clearances is not absolute in that an offeror whose offer is not recommended may still acquire securities by availing of the some of the other exceptions provided under Rules 5.2(a)(i), 5.2(a)(iv)(2) and 5.2(a)(iv)(3)(B). In any of those circumstances there might also be uncertainty in relation to obtaining such clearances in respect of the offer. The Panel is of the view that,

regardless of any such uncertainty, the offeree board would, in the 21 days prior to the first closing date, have adequate opportunity to explain to their shareholders the pros and cons of any such uncertainty and to advise them accordingly.

The Panel also notes that an offeror may pursuant to Rule 5.2(a) acquire securities or rights over securities where the board of the offeree has publicly recommended its offer or has consented to an acquisition that would otherwise be restricted, i.e. under Rules 5.2(a)(ii), 5.2(a)(iii) and 5.2(a)(iv)(1). However, there might be uncertainty as to whether a recommended offer would receive competition or other governmental or regulatory clearances.

In view of the above, the Panel is proposing a partial relaxation of Rule 5.2(a)(iv)(3), the effect of which would be to remove the restriction concerning such clearances once the first closing date of the offer has passed. The proposed amendments to the rule are set out below.

5.2 EXCEPTIONS TO RESTRICTIONS

"(a) Without prejudice to the application of Rule 9, the restrictions in Rule 5.1(a) shall not apply to an acquisition of voting securities of a relevant company, or (except in the case of sub-paragraph (i)) of rights over such securities, by a person:

(i) to (iii) ……

(iv) after the person has announced a firm intention to make an offer in respect of the company, provided that the making of the offer is not, at the time of the acquisition, subject to a precondition and:

(1) ……..
(2) ……..
(3) ~~either:~~

~~(A)~~ the first closing date of that offer <u>or of any competing offer</u> has passed ~~and no constraint on the implementation of such offer is outstanding under section 19 of the Competition Act, and no other governmental or regulatory authorisation, consent approval or clearance in respect of such offer is outstanding in the State or any other jurisdiction and it has been established that no proceedings will be initiated in respect of such offer by the European Commission or by a competent authority of a Member State pursuant to the European Merger Regulation or that such offer does not come within the scope of the Regulation; or
(B) the first closing date of any competing offer has passed and no constraint on the implementation of such competing offer is outstanding under section 19 of the Competition Act, and no other governmental or regulatory authorisation, consent, approval or clearance in respect of such competing offer is outstanding in the State or any other jurisdiction and it has been established that no proceeding swill be initiated in respect of such competing offer by the European Commission or by a competent authority of a Member State pursuant to the European Merger Regulation, or that such competing offer does not come within the scope of that Regulation; or

(4) . . . ."

2. Acquisition by the Offeror of Securities of the Offeree in Exchange for Securities – Rule 11

2.1 General Principle 1 states, amongst other things, that *"[a]ll holders of the securities of an offeree of the same class must be afforded equivalent treatment;".* However, except in Rule 9.4(c), which is relevant only to mandatory offers, the Rules do not contain any specific requirement for an offeror who has acquired securities of the offeree in exchange for securities to make a securities offer.

Rule 11 (*when a cash offer is required – voluntary offers*) requires that, except with Panel consent, where an offeror or any person acting in concert with it (i) acquires for cash or other consideration during the offer period any offeree securities of any class which is the subject of the offer, or (ii) has acquired, for cash or other consideration during the 12 months prior to the commencement of the offer period, offeree securities representing in aggregate 10% or more of such a class, then the offer to be made to offeree shareholders must be in cash, or accompanied by a cash alternative, at a price per share of not less than the highest price per share at which the securities were acquired during the applicable period. When an offeror or concert party has acquired offeree securities of a class which is the subject of an offer for a consideration other than cash, then for the purposes of Rule 11 those securities will be deemed to have been acquired at a price equal to the value of that consideration at the time of the acquisition.

The Panel is of the view that cash may not always satisfy the requirements of General Principle 1 where there have been acquisitions for securities. There may be cases where offeror securities are delivered at a level that is advantageous to the vendor shareholders (i.e. those who have sold securities to the offeror). In addition, offeree shareholders who accept cash are not always in a position to purchase offeror securities on the same terms as those received by a vendor shareholder, as the market in the offeror securities may be illiquid. In any case, significant purchases of the offeror's securities would be likely to cause an increase in their price.

The Panel has considered this matter and believes there are circumstances in which acquisitions by an offeror in exchange for securities should result in a requirement for securities of that class to be offered to all offeree shareholders concerned. The Panel also believes that this requirement should apply whether the securities exchanged as consideration for the acquisitions concerned are securities of the offeror or of another company and whether they are new or existing securities.

2.2 In any consideration of whether there are circumstances in which the offeror should be required, as a result of making such acquisitions, to make a

securities offer to all offeree shareholders concerned, the size and timing of the relevant acquisitions are key factors to be taken into account.

In relation to the size of acquisitions made in exchange for securities, there could be considered to be an inconsistency between General Principle 1 and existing Rule 11 concerning acquisitions prior to an offer period in that 10% or more of the securities of the offeree of any class the subject of the offer must be acquired for cash or other consideration before a cash offer or cash alternative offer is required to be made available to all shareholders of that class. However, it is generally accepted that the offeror should be permitted limited buying freedom prior to an offer and aggregate acquisitions below 10% have generally been considered not to give rise to concerns under the General Principle.

Notwithstanding the above, in existing Rule 11(a)(ii) the Panel reserves the right, having regard to the General Principles, to require a cash offer to be made where there have been acquisitions for cash or otherwise of less than 10% of the class of offeree securities concerned during the 12 month period prior to the offer period. The relevant note on this rule states that *"the Panel will have particular regard to whether the vendors are directors of, or other persons closely connected with, the offeror or the offeree. In such cases, relatively small purchases could be relevant."* It is clear from the note that it is anticipated that the Panelôs discretion in this area would be exercised only in limited circumstances.

As regards the timing of acquisitions in exchange for securities, notwithstanding that the period used for determining whether acquisitions of offeree securities prior to an offer period give rise to a requirement to make a cash offer is 12 months, the Panel considers that the possible volatility of the offerorôs share price over such a long period of time could give rise to inequalities between the treatment of vendor shareholders and accepting shareholders. The scope for this problem to arise is obviously increased the longer the period of time within which acquisitions are taken into account. However, as it is now being proposed that any offeror who becomes obliged to make a securities offer in respect of a class of shares will usually also be obliged to make a cash alternative offer available in respect of the same class, a shareholder will always have the option of taking the cash consideration if the value of the securities offer is unattractive. The Panel is therefore of the view that a shorter time period prior to the offer period should be applied in the case of securities exchange acquisitions than that applied in the case of acquisitions requiring a cash offer under existing Rule 11.

Consequently, the Panel is proposing that a full securities offer should be made available to accepting shareholders where an offeror or any person acting in concert with it, in exchange for securities (i) acquires during the offer period any offeree securities of a class which is the subject of the offer or (ii) has acquired offeree securities representing 10% or more of such a class during the three month period prior to the commencement of the offer period.

As outlined above, the Panel, having regard to General Principle 1, has discretion to require a cash offer where acquisitions of less than 10% in nominal value of the issued offeree securities of the relevant class have been made during the 12 months prior to the offer period. The Panel is of the view that it should also have the discretion to require a securities offer where there have been acquisitions, in exchange for securities, of offeree securities of less than 10% in nominal value of the relevant class, and that, in addition, the Panel should have discretion to take into account acquisitions made more than three months (but not more than twelve months) prior to the commencement of the offer period.

2.3 The basis on which any securities would be offered to offeree shareholders was also considered by the Panel. There are two possible bases, one being where the number of securities to be offered to accepting shareholders for each offeree security held by them is equal to the number of securities delivered to the vendor shareholder for each of their offeree shares ("*same number basis*"); and the other being where the number of securities to be offered to offeree shareholders is calculated by reference to the cash value of the securities delivered to the vendor shareholders at the time the acquisition took place ("*same value basis*").

The Panel is of the view that in order to be consistent in terms of equivalent treatment, the securities offered should be on the same number basis. Where securities have to be offered, the nature of the consideration, and therefore the exchange ratio, is more important than the cash value of the securities received by the vendor shareholder at any particular point in time.

2.4 The Panel has also considered how acquisitions of offeree securities for a mixture of cash and securities should be treated under Rule 11. The Panel has concluded that there is no single answer to this question applicable in all circumstances and has therefore concluded that the Rules should not be overly prescriptive in relation to it. It is proposed to state in new Rule 11.2(b) that, where any securities of the offeree have been acquired for a mixture of securities and other consideration, the Panel may deem a proportion of the securities acquired to have been acquired for securities, which proportion will equal the proportion of the value of the total consideration for the securities acquired that consisted of securities or such other proportion as the Panel may deem appropriate in the circumstances. It is also proposed to add a new note 7 on Rule 11 which will highlight the need to consult the Panel if such circumstances arise. As transactions of this nature are rare, the Panel believes that it is appropriate for each such transaction to be considered on a case by case basis.

2.5 It is proposed to add a new note 6 on Rule 11 in relation to vendor placings. The note will state that the Panel may consider a derogation from Rule

11.2 in respect of a vendor placing if the offeror arranges for the immediate placing of the securities for cash.

2.6 It is proposed to delete the existing Note 4 (non-cash consideration) on Rule 11 as it will no longer be appropriate in light of the proposed new Rule 11.2.

2.7 The Panel also proposes to add a new note on Rule 6 to clarify the relationship between Rules 6 and 11. It will state that, where an obligation is incurred under Rule 11, compliance with that rule will normally be regarded by the Panel as satisfying any obligation under Rule 6 in respect of that obligation.

2.8 It is proposed under Rule 11.2 to impose, on the basis outlined above, a securities offer obligation on an offeror who has acquired offeree securities in exchange for securities. In such circumstances, that offeror will also acquire an obligation under Rule 11.1 to provide an equivalent cash alternative offer to offeree shareholders. The rationale for this is that a shareholder should always have the option of taking the cash consideration if the value of the securities offer is unattractive. Such a situation might arise, for example, where the value of the securities to be offered has decreased since the securities were delivered to the vendor shareholder. The Panel would welcome views on whether it is appropriate to also impose a cash alternative obligation on an offeror who has acquired an obligation to make a securities offer available to offeree shareholders.

The proposed amendments to Rule 11 and the notes thereon are set out below.

"RULE 11. ~~WHEN A CASH OFFER IS REQUIRED~~ NATURE OF CONSIDERATION TO BE OFFERED - VOLUNTARY OFFERS

11.1 WHEN A CASH OFFER IS REQUIRED

(a) Except with the consent of the Panel in cases falling under subparagraphs (i) and (iii), if in the case of any voluntary offer:

> ***(i) the offeror or any person acting in concert with it has acquired, during the period (in Rule 11.1 referred to as the "Rule 11.1 relevant period" of 12 months prior to the commencement of the offer period, securities of the offeree of any class the subject of the offer which represent in the aggregate 10% or more in nominal value of the issued securities of that class, excluding treasury shares; or***
>
> ***(ii) …..during the Rule 11.1 relevant period ……***
> ***(iii)……***

the offer made or to be made by the offeror to the holders of securities of the offeree of that class shall, without prejudice and in addition to any obligation of the offeror arising under Rule 11.2, be in cash, or accompanied by a cash alternative offer. The price per security under such offer or cash alternative offer shall not be less than the highest value of the consideration per security paid by the offeror or any person acting in concert with it for securities of that class during:

> ***(1) the Rule 11.1 relevant period, if subparagraph (i) or (ii) above is applicable;***
> ***(2) the offer period, if subparagraph (iii) above is applicable; or***
> ***(3) the Rule 11.1 relevant period or the offer period, if subparagraph (i) or (ii) and subparagraph (iii) are applicable.***

(b) ……
(c)) ……

(d)) … during the Rule 11.1 relevant period ….
(e)) …….
(f)) …… during the Rule 11.1 relevant period ….
(g)) …….
(h) If during the Rule 11.1 relevant period …….
(i) Rule 6.2 (e) shall apply for the purposes of Rule 11.1 ~~11~~ as if the reference in that rule to Rule 6.1 were a reference to Rule 11.1 ~~11~~.
(j) No acquisition of securities which would give rise to an obligation to make a cash offer or provide a cash alternative offer under Rule 11.1 ~~11~~ shall be made by any person unless such person is satisfied that the offeror is able and will continue at all relevant times to be able to implement that cash offer or cash alternative offer.

11.2 WHEN A SECURITIES EXCHANGE OFFER IS REQUIRED

(a) Except with the consent of the Panel in cases falling under subparagraph (i) or (iii), if in the case of a voluntary offer:

(i) the offeror or any person acting in concert with it has acquired , during the period (in Rule 11.2 referred to as the "Rule 11.2 relevant period") of three months prior to the commencement of the offer period and in exchange for securities, securities of the offeree of any class the subject of the offer which represent in the aggregate 10% or more in nominal value of the issued securities of that class, excluding treasury shares; or

(ii) the offeror or any person acting in concert with it has acquired:

(1) during the Rule 11.2 relevant period and in exchange for securities, securities of the offeree of any class the subject of the offer which represent in the aggregate less than 10% in nominal value of the issued securities of that class, excluding treasury shares; or

(2) during a period (the "extended Rule 11.2 relevant period") of more than three but not more than 12 months prior to the commencement of the offer period and in exchange for securities, securities of the offeree of any class the subject of the offer which represent in the aggregate 10% or more in nominal value of the issued securities of that class, excluding treasury shares, and the Panel, having regard in such case to the General Principles, considers that it is just and proper so to direct and accordingly so directs; or

(iii) the offeror or any person acting in concert with it has acquired, during the offer period and in exchange for securities, securities of the offeree of any class the subject of the offer,

the offer, or an alternative offer, made or to be made by the offeror to holders of securities of the offeree of that class shall, without prejudice and in addition to any obligation of the offeror arising under Rule 11.1, be made in exchange for securities ("exchange securities") of the same issuer and of the same class as the securities (the "consideration securities") delivered by the offeror or (as applicable) the person acting in concert with it in exchange for the securities of the offeree acquired by the offeror or that person as described in subparagraph (i), (ii)(1) or (2) or (as applicable) (iii) above. All such exchange securities shall be offered on the basis of a ratio of exchange securities to securities of the offeree that is equal to the highest ratio of the consideration securities delivered by the offeror or any person acting in concert with it in exchange for securities of the offeree in any acquisition made by the offeror or any person acting in concert with it during:

(1) the Rule 11.2 relevant period, if subparagraph (i) or (ii)(1) alone is applicable;

(2) the extended Rule 11.2 relevant period if subparagraph (ii)(2) alone is applicable;

(3) the offer period, if subparagraph (iii) alone is applicable;

(4) the Rule 11.2 relevant period or the offer period, if subparagraph (i) or (ii)(1) and subparagraph (iii) are applicable; or

(5) the extended Rule 11.2 relevant period or the offer period, if subparagraph (ii)(2) and subparagraph (iii) are applicable.

(b) Where any securities of the offeree the subject of the offer are or have been acquired by the offeror or any person acting in concert with it for a consideration consisting of a mixture of securities and other consideration, the Panel may, for the purposes of paragraph (a), deem a proportion of the securities so acquired to have been acquired for securities, which proportion shall (so far as practicable) equal the

proportion of the value of the total consideration for the securities acquired that consisted of securities or shall be such other proportion as the Panel may deem to be appropriate in the circumstances; and Rule 6.2(e) shall apply for the purposes of this paragraph (b) as if the reference in that paragraph to Rule 6.1 were a reference to this paragraph.

(c) References in paragraph (a)(i) to (iii) to securities exchanged by an offeror or a person acting in concert with it for securities of the offeree include references to new or existing securities and to securities of the offeror, of a person acting in concert with it or of any other person.

(d) Paragraphs (d), (f), (g) and (h) of Rule 11.1 shall apply mutatis mutandis for the purposes of Rule 11.2. "

"NOTES ON RULE 11

1. Equality of treatment

In considering whether to exercise the discretion given to the Panel in Rule 11.1(a)(ii) to require cash to be made available or in Rule 11.2(a) (ii) to require securities to be made available ~~where acquisitions of the required type and size have not been made by the offeror within the 12 months or, as appropriate, the three month period prior to the commencement of the offer period~~, the Panel will have particular regard to whether the vendors are directors of, or other persons closely connected with, the offeror or the offeree. In such cases, relatively small purchases could be relevant.

2. Discretionary ~~clients~~ fund managers and principal traders
Except in the case of Shared Jurisdiction Companies, dealings ~~for~~ by discretionary ~~clients by~~ fund managers or principal traders connected with the offeror, unless they are exempt, ~~fund managers,~~ may be relevant (see Rule 7.2).

3. Derogation from highest price

If the offeror considers that the highest price (for the purposes of Rule 11.1 ~~11(a)~~or 11.2) should ……

- *(a) …. ~~purchases~~ acqusitions;*
- *(b) …..*
- *(c) …~~purchased~~ acquired…*
- *(d) …~~purchased~~ acquired….*

~~4. Non cash consideration~~

~~Where securities are acquired during the relevant period or during the offer period for a consideration other than cash, the Panel may consider an application for a derogation to permit an offer to be made or continued without compliance with Rule 11(a). When the Panel considers an application for such a derogation, factors which it may take into account include:~~

~~(i) If the consideration takes the form of a debt instrument, the terms of redemption of that instrument ;~~
~~(ii) the circumstances of any placing or sale of any securities received as consideration by the vendor of the relevant offeree securities;~~
~~(iii) the terms of any arrangement under which the vendor of the relevant offeree securities is constrained from selling any securities received as consideration.~~

4. ~~5.~~ Securities exchange offer

Where Rule 11.1 ~~11(a)~~ is applicable to a securities exchange offer which has been the subject of a Rule 2.5 announcement, compliance with Rule 11.1 ~~11(a)~~ must be by means of a cash alternative offer (see Rule 2.7).

5. ~~6.~~ Offer period

……

6. Vendor placings

The Panel may consider an application for a derogation from the obligation to make a securities exchange offer under Rule 11.2 in respect of vendor placings if an offeror or any person acting in concert with it arranges the immediate placing of the consideration securities for cash.

7. Acquisitions for a mixture of securities and other consideration

*The Panel should be consulted where (i) offeree securities which represent in aggregate 10% or more in nominal value of the issued securities of any class have been acquired for a mixture of securities and other consideration within 12 months prior to the commencement of the offer period or (ii) any offeree securities have been acquired for such a mixture during the offer period.***"**

NOTE 6 ON RULE 6

"6. Rule 11

Acquisitions of securities of the offeree may also give rise to an obligation under Rule 11. Where an obligation is incurred under Rule 11 by reason of any such acquisition, compliance with that rule will normally be regarded by the Panel as satisfying any obligation under this rule in respect of that obligation."

Management Incentivisation – Rule 16

3.1 Rule 16 provides that, except with the consent of the Panel, neither an offeror nor any person acting in concert with it may make arrangements with offeree shareholders or persons interested in relevant securities of the offeree if there would be attached to such arrangements a term favourable to such shareholder or such person that is not being extended to all offeree shareholders. Clearly, the underlying principle in the rule is equivalent treatment of all shareholders as required under General Principle 1. It is proposed to add a confirming statement in Rule 16.1 (existing Rule 16 as renumbered) that any such extension will be made to actual holders of securities of the offeree and not to persons who may be interested in the securities but are not holders of them.

Note 4 on Rule 16 *(management retaining an interest and other management incentivisation)* sets out some guidelines on the conditions which the Panel may impose when consenting to arrangements between the offeror and offeree management that would otherwise be prohibited by the rule. It is clear from the note that the Panel recognises that an offeror may wish to arrange for offeree management to remain financially involved in the business for the purpose of incentivisation. The note states that the Panel is concerned to ensure that the risks as well as the rewards associated with an equity shareholding are applied to the offeree managementôs retained interest.

Where incentivisation arrangements take the form of offeree management exchanging their offeree securities for securities of the offeror on terms that are not being offered to all other offeree shareholders, the Panel will, according to the note, normally require as conditions of its consent:

(i) a publicly stated opinion from the independent adviser to the offeree that the terms of the arrangements are fair and reasonable; and

(ii) approval at a general meeting by a majority of independent offeree shareholders.

In cases where other incentivisation proposals, of whatever nature, are being offered to management of the offeree, a fair and reasonable opinion from the independent adviser to the offeree will be required, according to the note, but the note makes no reference to any requirement for a vote of independent shareholders even where such proposals may be significant or unusual. Note 4 implies that the opinion of the independent adviser is required irrespective of whether offeree management has an interest in the relevant securities of the offeree. However, if management has no such interest, any incentivisation arrangements would fall outside the scope of Rule 16. The note is not specific as to how the Panelôs consent requirements would differ according to the type of other incentivisation being offered, of which there are clearly many different forms.

3.2 There have been a number of instances over the years where practitioners have had difficulties understanding how Note 4 would apply, particularly in relation to incentivisation arrangements not involving offeror securities. Therefore, the Panel is proposing that Rule 16 be amended to provide some greater specificity and clarity in relation to the issues referred to in Note 4, which will be deleted.

3.3 Management incentivisation arrangements are of relevance to offeree shareholders as such arrangements may reduce the level of consideration available to fund an offer and may influence executive directors or senior managers and hence the outcome of offeree board decisions. It is the Panelôs view that it is the size and structure of the incentivisation arrangements, as well as the opinion of the independent advisers to the offeree, that is most relevant to offeree shareholders and to the Panel when forming a view on any such arrangements.

3.4 The Panel is proposing the renumbering of existing Rule 16 as Rule 16.1 and the adoption of a new Rule 16.2 which will require the disclosure in the offer document of the details of any incentivisation arrangements with members of offeree management who are interested in relevant securities of the offeree, where such arrangements have been entered into or are at an advanced stage of discussion. The independent adviser to the offeree will also be required to state publicly in the offer document that the arrangements are fair and reasonable. In addition, where it is intended to put incentivisation arrangements in place but either no discussions or only limited discussions have taken place, this will have to be stated and details of the discussions disclosed in the offer document. Where no incentivisation arrangements are proposed or the terms have not been finalized, this will also have to be disclosed. It is proposed to include in Rule 16.2 a paragraph (c) which will provide some guidance in circumstances where

incentivisation arrangements are put in place or are amended after the offer document has been posted.

Furthermore, the new rule will state that the Panel may require such arrangements to be approved at a general meeting of the offeree. A proposed new Note 1 on Rule 16.2 will state that the Panel in exercising its discretion will have regard to whether the arrangements are significant and whether the nature of the arrangements are unusual.

The new rule will also expressly state that, where the offeree management are interested in the relevant securities of the offeree and as a result of incentivisation arrangements will become shareholders in the offeror on a basis that is not being made available to other offeree shareholders, the arrangements must be approved at a general meeting of offeree shareholders.

According to the proposed Rule 16.2(d), where offeree management are to receive offeror securities pursuant to a proposal made in accordance with Rule 15, offeree shareholder approval will not be required, although details of the arrangements must be publicly disclosed together with a fair and reasonable opinion from the independent adviser to the offeree.

As stated above, if offeree management is not interested in relevant securities of the offeree, any incentivisation arrangements between them and an offeror will fall outside the scope of Rule 16. It is proposed to add a new Note 2 to Rule 16.2 which will state that in such circumstances the Panel should be consulted in order to determine whether any issues arise under Rule 3 *(independent advice; views of the board)* or Rule 21 (*frustrating action*).

The proposed amendments to Rule 16 and the notes thereon are set out below.

"RULE 16. SPECIAL ARRANGEMENTS ~~WITH FAVOURABLE TERMS~~ AND MANAGEMENT INCENTIVISATION

16.1 SPECIAL ARRANGEMENTS WITH FAVOURABLE TERMS

Except with the consent of the Panel, …..

Nor may an offeror……..

If any requirement of Rule 16 is observed…….

For the avoidance of doubt, this rule does not require that the benefit of any such arrangement be extended to any person in respect of any securities of the offeree in which that person is interested but of which he or she is not a holder.

16.2 MANAGEMENT INCENTIVISATION

(a) Except with the consent of the Panel and subject to paragraphs (b) and (c), where an offeror has entered into, or reached an advanced stage of discussions on proposals to enter into, any form of incentivisation arrangements with any members of the management of the offeree who are interested in relevant securities of the offeree, no such arrangements or proposals *("management incentivisation arrangements or proposals")* ***shall be implemented unless the offeror has disclosed relevant details of them***

in the offer document and the independent adviser to the offeree has stated publicly that in its opinion the arrangements or proposals are fair and reasonable. If it is intended to put management incentivisation arrangements in place following completion of the offer, but either no discussions or only limited discussions have taken place, that fact shall be stated, and relevant details of the discussions (if any) shall be disclosed, in the offer document. Where no such arrangements are proposed, that fact shall be disclosed in the offer document.

(b)(i) The Panel, having regard to the General Principles, may require that any management incentivisation arrangements or proposals be approved at a general meeting of the offeree shareholders.

(ii) Without prejudice to subparagraph (i), where any members of the management of the offeree are interested in relevant securities of the offeree and, as a result of the implementation of any management incentivisation arrangements or proposals, they would, apart from this paragraph, become shareholders of the offeror on a basis that is not being made available to other offeree shareholders, the implementation of such arrangements or proposals shall be subject to their having been approved at a general meeting of the offeree shareholders.

(iii) Every shareholder approval required by this rule shall be by a separate vote of independent shareholders, taken on a poll.

(c) Where, following the publication of the offer document and before completion of the offer, there is a change in the terms of any agreed or proposed management incentivisation arrangements or proposals or the offeror enters into, or reaches an advanced stage of discussion on proposals to enter into, any form of such arrangements, the offeror shall consult the Panel. The Panel may require, as a condition of the implementation of the arrangements or proposals, that the offeror disclose relevant details of all such changes to the arrangements or (as the case may be) of newly agreed or proposed arrangements and the status of any discussions between the parties, that the independent adviser to the offeree state publicly that in its opinion the arrangements or proposals are fair and reasonable and, if the Panel considers it appropriate, that such arrangements or proposals be approved at a general meeting of the offeree shareholders.

(d) Where members of management of the offeree are to receive securities of the offeror pursuant to an appropriate offer or proposal made in accordance with Rule 15, paragraphs (a), (b) and (c) shall not apply to that offer or proposal, but the offer or proposal shall not be implemented unless the offeror has publicly disclosed details of it and the independent adviser to the offeree has stated publicly that in its opinion the offer or proposal is fair and reasonable.

(e) The offeror shall be obliged to consult the Panel in all cases referred to above, except in circumstances to which paragraph (b)(ii) or (d) above is applicable."

NOTES ON RULE 16

"NOTES ON RULE 16.1

1. Top-ups and other arrangements

2. Offeree shareholders' approval of certain transactions - for example, disposal of offeree assets

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

The Panel will consider allowing such a procedure in respect of other transactions in which the issues are similar, for example, a transaction with an offeree shareholder involving offeror assets.

3. Finders' fees

…..

~~*4. Management retaining an interest and other management incentivisation.*~~

~~*Sometimes an offeror may wish to arrange for the management of the offeree to remain financially involved in the business. The methods by which this may be achieved vary but the principle which the Panel is concerned to safeguard is that the risks as well as the rewards associated with an equity shareholding should apply to the management's retained interest. For example, it is unlikely that the Panel would find acceptable in this context an option arrangement which guaranteed the original offer price as a minimum.*~~
~~*The Panel will normally require as a condition of its consent that the matter be dealt with in the manner described in Note 2 above.*~~
~~*Where an offeror wishes to arrange other incentivisation for management to ensure their continued involvement in the business, the Panel will require, as a condition of its consent, that an independent advisor to the offeree publicly states that in its opinion the arrangements are fair and reasonable as respects the interests of the shareholders generally.*~~
~~*The Panel should be consulted in any case (including a management buyout) where this Note may be relevant.*~~*"*

NOTES ON RULE 16.2

1. Independent shareholder approval

In considering whether to exercise its discretion under Rule 16.2(b) or (c) to require the arrangements to be approved at a general meeting of the offeree shareholders, the Panel will have particular regard to whether the value of the arrangements is significant and whether the nature of the arrangements is unusual.

2. Incentivisation of members of management who are not interested in securities of the offeree

Where members of management who are not interested in securities of the offeree are to be offered significant or unusual incentivisation arrangements by the offeror, the offeror should consult the Panel in order to determine whether any issues arise under Rule 3 or Rule 21."

3.5 In considering the proposed amendments to Rule 16, the Panel is proposing to add the following notes on Rules 15 and 24.5.

As the proposed new Rule 16.2(d) refers to offers and proposals made in accordance with Rule 15, the following note on Rule 15 would contain a cross-reference to Rule 16.2(d):

"NOTE ON RULE 15

Rule 16.2(d)

See the above rule where members of the offeree management are to receive offeror securities pursuant to an offer or proposal made in accordance with Rule 15."

Rule 24.5 (*special arrangements*) requires the offer document to contain details of any agreements or arrangements between the offeror (or any person acting in concert with it) and any offeree director, any offeree shareholder or any person interested in relevant securities of the offeree. It is proposed to add a new note on Rule 24.5 cross-referring to Rule 16.2 as set out below:

"NOTE ON RULE 24.5

Management incentivisation arrangements
See Rule 16.2."

4. Equality of Information to Competing Offerors – Rule 20.2

4.1 General Principle 3 states that *"[t]he board of an offeree……must not deny the holders of securities the opportunity to decide on the merits of the offer".* The

General Principle is given effect primarily through Rule 21 (*frustrating action*) but also through Rule 20.2.

Rule 20.2 sets out the circumstances in which a competing offeror must be given access to information previously provided by the offeree to another offeror. Essentially, if the existence of the other offeror has been the subject of an announcement under Rule 2.4 or Rule 2.5 (regardless of whether the identity of the offeror has been disclosed), an offeree board must, on request, provide the competing offeror with access to the same information provided to the other offeror. The purpose of the rule is to prevent any preference that an offeree board may have for one offeror over another from resulting in a potential competing offeror not making an offer because it has been denied access to information on the offeree which has already been provided to another offeror. Thus, the rule prevents an offeree board in such circumstances from denying offeree shareholders the opportunity to decide on the merits of an offer.

4.2 Rule 20.2 does not address the issue of whether the offeree can impose conditions on the first offeror to receive the information, as the rule does not apply at that stage since there is no competing offer. More significantly, the rule makes no reference to whether the offeree can impose conditions on the competing offeror who receives the same information if such conditions or similar conditions were imposed on the first offeror.

Parties providing information under Rule 20.2 may have legitimate concerns about how the information may be used, and the Panel is of the view that there should be some flexibility under the rule for offerees to protect that information. Therefore, the Panel is proposing that Rule 20.2 be amended so that an offeree may impose conditions in relation to: the confidentiality of the information passed; reasonable restrictions forbidding the use of the information provided to solicit customers or employees; and the use of the information solely in connection with the offer or potential offer. Such conditions should be no more onerous that the conditions imposed on any other offeror.

Offerors seeking financial or other information on the offeree are often required to enter into "hold harmless" agreements whereby they agree that they cannot hold a firm of accountants or other third party, which produced the information, liable for any loss arising from their reliance on that information. The Panel believes that Rule 20.2 should also provide that the passing of information under the rule may be subject to an offeror signing such an agreement, provided all other offerors have been required to sign an agreement in similar form.

4.3 For the purposes of Rule 20.2, it may be necessary to determine which party or parties to a reverse takeover or a takeover which is characterised as a "merger" should be regarded as the offeree. In the case of agreed reverse takeovers, the smaller company is strictly speaking the offeror; however, the substance of the transaction can be very much the opposite. In view of this,

either party to such a transaction can properly be viewed as the offeree. Likewise, in the case of a merger where the percentage shareholding of the offeror and that of the shareholders of the offeree in the enlarged entity will be exactly equal on completion of the transaction. Therefore, the Panelôs view is that Rule 20.2 should apply to the information on either party to such a reverse takeover or merger and that the rule should be amended to reflect this.

The proposed amendments to Rule 20.2 are set out below.

"(a) .....

(b) (i) Except as provided in subparagraph (ii) below, the provision of information by the offeree board pursuant to this Rule shall not be made by it subject to any condition other than those relating to: the confidentiality of the information provided; reasonable restrictions prohibiting the use of the information provided to solicit customers or employees; and the use of the information solely in connection with an offer in respect of the offeree . No such condition shall be any more onerous than those imposed by the offeree board upon all other offerors.

(ii) The provision of information pursuant to this Rule may be made subject to a requirement that the offeror sign a hold harmless letter in favour of a firm of accountants or other third party, provided that every other offeror to which the offeree board has provided such information has been required to sign a letter in the same or substantially similar form.

(c) Where an offer or possible offer (the "first offer") would or might oblige the offeror to increase by 100% or more its existing issued share capital that confers voting rights, a person who makes an offer (the "second offer") in respect of either the offeror or the offeree in the first offer (the "target") shall (if the target is a relevant company and paragraph (a) is not otherwise applicable) in connection with the second offer have the same right under paragraph (a) to receive information made available by the target to the other party to the first offer in connection with that offer as if the target were an offeree that had previously made the information available to another offeror in connection with an offer in respect of the target.

~~(b)~~ (d) ...."

5. Offeree Board Circulars - Financial and Other Information - Rule 25

5.1 Rule 24.2(c) requires the offeror to include in the offer document the same information in respect of the offeree as it is required to include in respect of itself by Rule 24.2(a)(i)(1) to(8). In particular, the offeror is required to include information about all known material changes in the financial or trading position of the offeree subsequent to the last published audited accounts or a statement that there are no known material changes. Rule 25 (*offeree board circulars*) sets out the information which the offeree is required to include in its response circular, whether it recommends acceptance or rejection of the offer. The rule contains no specific requirement for the offeree to include in its circular any details relating to the financial or trading position of the company.

Under Rule 19.2, every document and advertisement issued by or on behalf of an offeror or the offeree to shareholders in connection with an offer must contain a directorsôresponsibility statement for the information contained in it. In the case of a recommended offer, the first response circular from the offeree board is combined with the offer document and the offeree directors normally take responsibility for all of the information in the offer document relating to the offeree. Consequently, the directors of the offeree would take responsibility for

any statement in the offer document relating to the financial or trading position of the offeree since the date of its last audited accounts.

However, in the case of a unilateral offer the offer document can only contain information in relation to material changes affecting the offeree that are known to the offeror. As Rule 25 does not require the offeree board circular to make any statement as to whether there have been any material changes in the company's financial or trading position, no comfort is provided to offeree shareholders by the offeree board. The latter is clearly best placed to comment on the affairs of the offeree.

5.2 Having reviewed Rule 25, the Panel proposes that the rule be amended to include an explicit requirement that the offeree directors make a statement in the first response circular regarding any known material changes in the company's financial or trading position since the date of the last published audited accounts. The Panel believes that the proposed amendments are in line with General Principle 2, which provides that offeree shareholders be given sufficient information to enable them to reach a properly informed decision on the offer.

Notwithstanding this proposed amendment, the Panel also believes that in the case of a unilateral offer it would still be appropriate to require the offeror to disclose in the offer document a statement regarding any material changes known to the offeror in the offeree's financial or trading position since the date of the last audited accounts even though that statement may be supplemented in the offeree's response circular. This will ensure that this publicly available information would be provided to offeree shareholders in as timely a manner as possible.

It is proposed that the new rule will, in the case of a recommended offer, disapply the requirement under Rule 24.2(c) for the offeror to disclose details of all known material changes in the financial or trading position of the offeree subsequent to the last published audited accounts (or a statement that there are no known material changes), as the offeree will in future be required to disclose that information in its response circular which, in the case of a recommended offer, will form part of the offer document.

It is proposed to reflect these amendments in a new Rule 25.8 as set out below.

" 25.8 FINANCIAL INFORMATION ON THE OFFEREE

(a) The offeree board shall include in the first response circular a statement of all known material changes in the financial or trading position of the offeree subsequent to the last published audited accounts or a statement that there are no known material changes.

(b) Where the first response circular is combined with the offer document, the offeror shall not be required to comply with Rule 24.2(c) insofar as it relates to Rule 24.2(a)(i)(4)."

The following consequential amendment to Rule 24.2(c) is proposed:

"(a)……..
(b)……..
(c) subject to Rule 25.8(b), the offer document shall contain information on the offeree on the same basis as set out in subparagraphs (a)(i)(1) to (8);
(d) – (i)."

5.3 In addition, it is proposed to delete the last paragraph of Rule 25.4(c). This paragraph permits the aggregation of the remuneration payable under directorsô service contracts except where to do so would conceal material variances between directors and provided that where a contract has been replaced or amended, the remuneration under both must be stated. The Panelôs view is that the first major circular from the offeree board should contain full details of each directorôs remuneration and that the disclosure should not be on an aggregated basis. This is in line with current corporate governance requirements. The rule as proposed to be amended is set out below.

"25.4 DIRECTORS' SERVICE CONTRACTS

(c) The particulars required to be disclosed in the circular in respect of existing service contracts and, where appropriate under paragraph (b), earlier contracts shall be:

(i) the name of the director under contract;

(ii) the expiry date of the contract;

(iii) the amount of fixed remuneration payable under the contract (irrespective of whether received as a director or for management);

(iv) the amount of any variable remuneration payable under the contract (including, inter alia, commission on profits) with details of the basis for calculating such remuneration;

(v) arrangements for company payments in respect of a pension or similar scheme.

~~If there is more then one contract, a statement of the aggregate remuneration payable under each under such contracts shall satisfy the requirement of subparagraph (iii), unless such statement would conceal material variances between directors (including, inter alia) because one director is remunerated at a significantly higher rate then the others); provided that where any contract has been replaced or amended, the particulars of the remuneration payable to the individual concerned under both the existing and the earlier contract shall be stated separately~~."

6. Day 39, No Extension and No Increase Statements - Rule 31.5 and Rule 32.2

6.1 Rules 31.5 and 32.2 provide broadly that, except with Panel consent, an offeror should be bound by any ñ*no extension*ò (Rule 31.5) or ñ*no increase*ò (Rule 32.2) statement, except to the extent that the offeror has specifically reserved the right in the relevant statement not to be bound in certain specified circumstances and those circumstances arise. The occurrence of a competitive situation and the recommendation by the offeree board of the offer concerned are expressly mentioned in each of the rules as circumstances that may be the subject of reservations to no extension/no increase statements. However, an offeror may include other reservations to such statements.

In the interests of an orderly market, no extension/no increase statements must be capable of being relied upon by offeree shareholders and the market as an accurate statement of the offeror's intentions. Consequently, notes 2 to both Rule 31.5 and Rule 32.2 state that Panel consent will not be granted (in circumstances where there has been an unqualified no extension/no increase statement) except where, having regard to the General Principles, the Panel considers there are exceptional circumstances which render it appropriate to do so.

Rule 31.9 prohibits the offeree board from releasing material new information after Day 39 of the offer timetable. Given that with Panel consent material new information may be released after Day 39, in order to minimize the period of uncertainty between the offeree announcement and the offeror clarifying its intentions, the Panel is proposing to amend Rule 31.5 and Rule 32.2 so that the offeror is required to inform offeree shareholders whether it will extend/increase its offer as soon as possible after the offeree announcement.

The proposed amendments to those rules are set out below.

"31.5 NO EXTENSION STATEMENTS

(e) If, after the offeror has made a no extension statement, the offeree makes an announcement of the kind referred to in Rule 31.9 after the 39th day, the offeror may (subject to the foregoing paragraphs and to any applicable consent of the Panel under Rule 31.6(a)(i)), choose not to be bound by its no extension statement and to be free to extend its offer, provided that, if it determines to make such an extension, it makes an announcement to that effect as soon as possible, and in any event within 4 business days after the offeree's announcement, and notifies shareholders of the offeree in writing at the earliest opportunity."

"32.2 NO INCREASE STATEMENTS

(e) If, after the offeror has made a no increase statement, the offeree makes an announcement of the kind referred to in Rule 31.9 after the 39th day, the offeror may (subject to the foregoing paragraphs and to any applicable consent of the Panel under Rule 31.6(a)(i), choose not to be bound by its no increase statement and to be free to revise its offer, provided that, if it determines to make such an increase, it makes an announcement to that effect as soon as possible, and in any event within 4 business days after the offeree's announcement, and notifies shareholders of the offeree in writing at the earliest opportunity."

6.2 The Panel is also proposing that the following amendments be made to both Rule 31.5 and Rule 32.2 in order to clarify that an offeror may choose not to be bound by a no extension or no increase statement in any circumstances that arise, provided that it has reserved the right to do so in those circumstances.

Paragraph (a) and (d) in Rule 31.5 would be amended as follows:

"(a) Subject to paragraphs (b), ~~and~~ (c) and (d), if an offeror includes …"

"(d) An offeror may choose not to be bound by a no extension statement in any given ~~the~~ circumstances ~~set out in paragraph (b) or (c)~~ only if it has specifically reserved the right to do so in such circumstances at the time at which the statement was made and such circumstances subsequently arise; this shall apply …"

Paragraphs (a) and (d) in Rule 32.2 would be amended as follows:

"(a) Subject to paragraphs (b), ~~and~~ (c) and (d), if an offeror includes …"

"(d) An offeror may choose not to be bound by a no increase statement in any given ~~the~~ circumstances ~~set out in paragraph (b) or (c)~~ only if it has specifically reserved the right to do so in such circumstances at the time at which the statement was made and such circumstances subsequently arise; this shall apply . . ."

7. Deletion of the term "*associate*"

7.1 The Panel has undertaken a review of the references to *"associate"* and *"acting in concert"* with a view to simplifying the Rules and thus assisting practitioners and parties to an offer in complying with the Rules.

The term ñassociateò, which originated in the Rules, is mainly relevant to the disclosure of dealings under Rule 8. For example, under Rules 8.1, 8.2 and 8.7 associates of the offeror and the offeree are required to disclose their dealings in relevant securities. The purpose of such disclosures is to ensure the market has full information and that the interests of the offeree shareholders are protected. The term is intended to cover all persons (many of whom will be presumed to be acting in concert with each other and/or with other parties to the offer) who are closely connected with the offeree and the offeror such as group companies, professional advisers acting in relation to the offer and directors of the offeree/offeror. The term also includes persons who have an interest or potential interest, whether commercial, financial or personal, in the outcome of an offer.

The term áacting in concertô on the other hand is a statutory concept and is mainly relevant in relation to control issues. Persons who cooperate on the basis of an agreement aimed at acquiring offeree securities, acquiring control of the offeree or frustrating the successful outcome of a bid will be regarded as acting in concert. The Rules contain a number of presumptions of concertedness which presume certain specified parties to be in concert unless the presumption is rebutted to the Panelôs satisfaction. The presumptions focus on certain close relationships where it is regarded as reasonable to presume that the parties in question are acting in concert. In addition, a person who is a majority shareholder in a company or controls the appointment of a majority of the members of its board of directors will be irrebuttably deemed to be acting in concert with it.

Currently, there is a significant overlap in the Rules between those persons falling within the scope of the definition of ñassociateò and those persons deemed or presumed to be acting in concert. However, there are certain categories of persons who are deemed to be associates of an offeror/offeree but who are not deemed or presumed to be acting in concert with either party.

The Panel is of the view that, considering the significant overlap between the two terms, the definition of ñassociateò should be deleted and references in the Rules to the term ñassociateò should be amended to áacting in concertô The principal effect of this will be that Rule 8 will now apply to persons acting in concert with, rather than associates of, an offeror or an offeree. If these amendments are made, a limited number of categories of persons who are currently regarded as

associates will no longer be required to disclose their interests and dealings in relevant securities of the offeree and (if applicable) the offeror unless they are interested in 1% or more of a class of relevant securities.

The Panel believes that this would be unlikely to cause a material loss of protection for offeree shareholders or for the market generally.

7.2 The current definition of associate lists twelve categories of persons who are treated as associates of an offeror or an offeree. There are seven categories of persons presumed to be acting in concert. A comparison schedule of these categories is set out in Appendix 1.

Of the twelve categories of associate there are eight categories that have equivalents or near equivalents in the presumptions of acting in concert. In the remaining four categories, where an ñassociateô person is not caught by the presumptions of acting in concert, those persons would either be caught under Rule 8, as amended, or would no longer fall within the scope of the Rules as, in the view of the Panel, their omission would not represent a material loss to the protection of offeree shareholders or the market in general.

Categories (d) and (e) of the definition of ñassociateò are not fully equivalent to category (v) of the presumptions of acting in concert in that a bank or a financial or other professional adviser, and persons controlling, controlled by, or under the same control as such bank or adviser, which is acting in relation to the offer for an associate of the type described in categories (a),(b) and (c) of the definition of ñassociateò (i.e. essentially group and closely related companies of the offeror or the offeree) would not be caught under category (v). In other words, while the adviser to such an associate of the offeror or the offeree will be presumed to be in concert with the relevant associate, they will not also be presumed to be in concert with the offeror or the offeree. However, such persons would be required under Rule 8.3 to disclose any dealings if they have an interest in 1% or more of any class of relevant securities of the offeror or the offeree. In the view of the Panel, should such a bank or a financial or other professional adviser have an interest in less than 1% of any class of relevant securities and, as a consequence of the proposed amendments, not be required to make a disclosure, the effect of this reduction in the level of disclosure would be likely to be minimal.

Category (h) of the definition of ñassociateò is not fully equivalent to category (iv) of the acting in concert presumptions. A person whose investments are managed on a discretionary basis by an associate of the offeror or the offeree is deemed to be an associate of the offeror or the offeree. However, the presumptions extend only to persons controlling, controlled by, or under the same control as the fund manager which clearly does not have as wide an application as the term ñassociateò. The Panel is of the view that this is unlikely to have a material effect on the disclosure rules.

Category (i) of the definition of ñassociateò has no equivalent under the acting in concert presumptions; however, any associate under that category will have to disclose any dealings in relevant securities under Rule 8.3. Consequently, there would be no effect on the disclosure rules.

Category (j) of the definition of ñassociateò has no equivalent under the acting in concert presumptions. Rule 8.7 *(indemnity and other arrangements)* requires the public disclosure of any agreement, of the type described in the rule, that exists with the offeror or the offeree or with any associate of either of them. In addition, as the party to such an agreement is regarded as an associate of the offeror or the offeree, it will be required under Rule 8.1 and Rule 8.2 to disclose all dealings in relevant securities during the offer period. Replacing the references to ñassociateò in Rule 8 with ñacting in concertò would have two consequences. Firstly, certain persons who are party to Rule 8.7 agreements would no longer be required to disclose those agreements under Rule 8.7 as they would fall outside the presumptions of concertedness (assuming of course that they were not actually acting in concert with the offeror or the offeree). Secondly, such persons would not be required to disclose their dealings in relevant securities under Rule 8.1 or Rule 8.2. However, they will continue to be required to disclose their dealings in relevant securities if they have an interest in 1% or more of any class of relevant security of the offeror or of the offeree. The Panelôs view is that those consequences are likely to have only a minimal effect on the disclosure rules.

Categories (k) and (l) of the definition of ñassociateò have no equivalents under the acting in concert presumptions; however, any such persons will continue to be required to disclose their dealings in relevant securities if they have an interest in 1% or more of any class of relevant security of the offeror or of the offeree.

7.3 Should the Panel, as a result of the proposed deletion of the term ñassociateò, become concerned about the dealing activities of any party, it could direct that party under section 9 of the Act to make the relevant dealing disclosures.

The proposed amendments to the Rules will require the deletion of the definition of ñassociateò throughout the Rules and the substitution for that term of the term ñacting in concertò.

7.4 In view of the deletion of ñassociateò, it is appropriate to delete Note 13 on Rule 8 which is set out below (Notes 14 and 15 on Rule 8 will be renumbered as Notes 13 and 14 respectively) and to amend Note 2 on Rule 20.1 as indicated below.

~~*"13. Arrangements*~~

~~*If a person is an associate of an offeror because he or she is party to an arrangement to which Rule 8.7 applies with an offeror or an associate of an offeror, he or she is also likely to be acting in concert with that offeror and in that case Rules 4, 5 ,6, 7, 9, 11 and 24 will be relevant. Where a person is an associate of an offeree because he or she is party to such an arrangement with an offeree or an associate of an offeree, Note 3 on Rule 9.1 and Rule 25.3 may be relevant. In either case, such a person will be an associate of the offeror or, as the case may be, of the offeree under paragraph (j) of the definition of "associate" and is therefore required to disclose publicly all transactions in relevant securities."*~~

"2. Information issued by ~~associates~~ persons acting in concert (for example, stockbrokers)

Attention is drawn to paragraph ~~(e) of the definition of "associate"~~ (b)(v) of the acting in concert presumptions in Rule 3.3 of Part A, as a result of which, for example, Rule 20.1(b) will be relevant to stockbrokers who, although not directly involved with the offer, are ~~associates of an~~ presumed to be acting in concert with the offeror or the offeree because the stockbrokers are in the same group as the financial adviser to an offeror or the offeree."

8. Market-Makers and Fund Managers

8.1 Introduction

The concept of "*exempt status*" was introduced into the Rules in 1997 and was based on the exempt concept which was introduced into the UK Code following the Big Bang reforms in 1986. Essentially, its purpose is to permit those entities that have exempt status to continue to trade in the securities of the offeree or, as the case may be, the offeror in circumstances where they would otherwise, in effect, be restricted or prohibited from trading.

The Rules impose certain prohibitions, restrictions and obligations in respect of certain dealings by certain parties involved in a takeover and by persons acting in concert with them. The Panel normally treats a group of persons acting in concert as being the equivalent of a single person.

Under Rule 3.3(b)(v) of Part A of the Rules, a financial adviser and persons controlling, controlled by or under the same control as that adviser are all presumed to be acting in concert with the adviser's client. Therefore, where the adviser is part of a larger organisation, the presumption of concertedness extends to all entities within that group, including market-makers and fund managers that are under common control with the adviser. As a result, such connected entities will be presumed to be acting in concert with, for example, an offeror that is being advised by a corporate finance or corporate broking department within their group. Consequently, the freedom of such market-makers and fund managers to deal would be severely constrained as a result of the operation of various rules. For example, Rules 6 and 11 impose certain obligations on an offeror if it, or any person acting in concert with it, purchases offeree securities. The offeror may incur an obligation to make an offer at a minimum level or to revise its existing offer depending on the particular circumstances. Offerors and their concert parties are also restricted under Rule 4.2 in their ability to sell offeree securities. On the offeree side, financial advisers

and stockbrokers to the target company are prohibited under Rule 4.4 from, amongst other things, acquiring offeree shares. As a result of these restrictions, and in the absence of the exempt system, market-makers and fund managers within the same group as an adviser to an offeror or an offeree would effectively be forced to cease trading in the securities concerned for the duration of the offer period.

Exempt market-makers connected with an offeror or an offeree are currently required to comply with the public dealing disclosure requirements under Rule 38.5. Furthermore, their activities are subject to the restrictions and prohibitions set out in Rules 38.1 to 38.4. Such requirements, restrictions and prohibitions are deemed essential to ensure that the trading activities of exempt market-makers and the use of the groupôs own capital are not permitted to influence the outcome of an offer. It has always been assumed that fund managers are less likely to take action to assist the groupôs corporate advisory clients, as fund managers have specific duties to their own discretionary clients. Consequently, connected exempt fund managers are not subject to the same restrictions and prohibitions that apply to market-makers.

Every notification by the Panel confirming its recognition of exempt status expressly states that when a market-maker or fund manager is connected with the offeror or the offeree, exempt status is relevant only where the sole reason for the connection is that the market-maker or fund manager is controlled by, controls or is under the same control as a financial or other professional adviser (including a stockbroker) acting in relation to the offer for the offeror or, as the case may be, the offeree, i.e. the only purpose of exempt status is to remove the exempt entity from the presumption of concertedness in Rule 3.3(b)(v) of Part A of the Rules. Therefore, if the market-maker or fund manager is connected with the transaction for any other reason, the normal consequences of the presumptions of concertedness will apply.

Originally, the rationale for introducing exempt status in the UK was to maintain liquidity in the securities of the offeree during the offer period and to provide connected fund managers with the flexibility to trade, thereby enabling them to continue to act in the best interests of their clients. Initially, therefore, exempt status was granted only to market-makers in respect of their market-making activities and to fund managers. In order to acquire exempt status, parties had to be able to demonstrate to the UK Panelôs satisfaction that their operations were independent and segregated from the corporate advisory and corporate broking businesses within their group.

Over the years, the scope of exempt status was extended, particularly as it applied to market-makers, with the UK Panel agreeing to extend the list of trading activities that could benefit from such status. Initially, this resulted, in effect, in a broadening of the definition of ñmarket-makingò to include any activity that was undertaken in a client-serving capacity. This extension of the exempt system

was driven by the huge increase in trading in derivatives in the 1990ûs which led to frequent requests to consent to a variety of principal trading activities as falling under the exempt umbrella. With the introduction of SETS (a trading platform to which the concept of officially designated market-makers does not relate) in 1997, the scope of exempt status was further extended to include all trading, including principal trading, by an exempt entity in all of the securities traded on SETS. This gradual expansion of the principal trading activities that could benefit from exempt status resulted in the UK Panel amending the Code in 2005 to replace the term ñmarket-makerò with ñprincipal traderò and thus, from that date, any trading desk within an organisation, whether trading in a market-making capacity or in a proprietary capacity, may be granted exempt status provided it can satisfy the UK Panel that its operations are independent and segregated from the corporate advisory and corporate broking businesses within its group.

Shortly thereafter, the Panel considered whether the Rules should be amended to extend exempt status to all forms of proprietary trading. The Panel decided not to extend the exempt system at that time, primarily because it was not comfortable with the attendant risk and also because it wished to ascertain how the new system in the UK would operate.

As the extension to the UK exempt system appears not to have given rise to any particular problems, the Panel is of the view that it is now appropriate to adopt the term ñprincipal traderò in the Rules. Should the term be adopted in the Rules, a careful review of all applications for exempt status in respect of principal trading operations will be undertaken to enable the Panel to understand the nature of such operations and to be satisfied as to the independence of such operations from their respective advisory and corporate broking operations. In addition, the Panel believes that the following features will be important safeguards in reducing the risk that there will be any deterioration in trading standards by those trading desks that are granted exempt principal trader status:

(1) the daily monitoring of dealings in relevant securities during the offer period, and their investigation as appropriate, by the Panel;

(2) the dealing disclosure requirements under the Rules and in particular those in Rule 38.5; and

(3) the restrictions and prohibitions in Rules 38.1 to 38.4.

8.2 Rule amendments to introduce principal trader status and exempt principal trader status

The Panel is proposing to amend the Rules (but not the Substantial Acquisition Rules) to replace the existing definitions of ñmarket-makerò and ñexempt market-makerò with new definitions of ñprincipal traderò and ñexempt principal traderñ The following Rule amendments are therefore being proposed.

(1) A definition of "principal trader" is to be introduced into the Rules as follows:

""principal trader" means a person who is registered as a market-maker with the Irish Stock Exchange Limited or the London Stock Exchange plc, or is accepted by the Panel as a market-maker, or is a member firm of either of such stock exchanges dealing as principal in order book securities;"

(2) The existing definition of "exempt market-maker" in the Rules to be replaced with a new definition of "exempt principal trader" as follows:

""exempt principal trader" means a principal trader who is recognised by the Panel as an exempt principal trader for the purposes of these Rules, has been notified in writing of that fact by the Panel and has not been notified by the Panel of the withdrawal of such recognition;"

(3) The existing definition of "exempt market-maker" will consequently be deleted:

~~***"exempt market-maker" means a person who, in relation to the securities concerned, is registered as a market-maker in those securities with the London Stock Exchange Limited or is accepted by the Panel on Takeovers and Mergers as a market-maker in those securities and who, in either case, has been recognised by the Irish Takeover Panel as an exempt market-maker for the purposes of these Rules, has been notified in writing of that fact by the Panel and has not been notified by the Panel of the withdrawal of such recognition;***~~

(4) All existing references in the Rules to "exempt market-maker(s)" and "market-maker(s)" to be replaced with "exempt principal trader(s)" and "principal trader(s)", as appropriate.

(5) It is proposed to add the following as a new Note 7(b) on Rule 2.1 of Part A of the Rules (the existing Notes 7(b) and (c) to be renumbered 7(c) and (d)) for the purpose of stating clearly the effect of being granted exempt status:

"(b) The effect of a principal trader or fund manager having exempt status is that the presumption of concertedness in Rule 3.3(b)(v) will not apply. However, the principal trader or fund manager will still be regarded as connected with the offeror or offeree, as appropriate. Connected exempt principal traders, but not connected exempt fund managers, must comply with Rule 38. Connected exempt principal traders and connected exempt fund managers must comply with the relevant provisions of Rule 8."

(6) Rule 4.2 sets out a number of restrictions on dealings by the offeror and its concert parties. Rule 4.2(e) expressly states that the restrictions in Rule 4.2 shall not apply to an exempt fund manager which is connected with the offeror if the sole reason for that connection is that the fund manager is controlled by, controls or is under the same control as a financial or other professional adviser acting for the offeror in relation to the offer. The Panel is proposing to amend Rule 4.2(e) so that it also applies to exempt principal traders as the concept of exempt status should apply equally to principal traders and fund managers in these circumstances. The proposed amendments to Rule 4.2(e) are set out below:

"(e) The provisions of paragraphs (a) and (b) shall not apply to an exempt fund manager or an exempt principal trader which is connected with the offeror if the sole reason for that connection is that the fund manager or the principal trader is controlled by, controls or is under the same control as a financial or other professional adviser (including a stockbroker) acting for the offeror in relation to the offer."

(7) Rule 5.1(c) provides that acquisitions of voting securities or of rights over such securities for discretionary clients by fund managers connected with an offeror shall be included in the aggregation of acquisitions for the purposes of Rule 5.1 except where they are exempt fund managers. The Panel is proposing that the Rule be extended to principal traders as there appears no logical reason why it should not do so. The amended paragraph is set out below:

"(c) Acquisitions of voting securities or of rights over such securities for discretionary clients by fund managers or principal traders connected with an offeror shall, except where they are exempt ~~fund managers~~, be included in the aggregation of acquisitions, unless the Panel consents otherwise. It shall be the duty of the offeror, the financial adviser to the offeror, ~~and~~ the fund manager and the principal trader concerned to ensure that such obligation is observed."

(8) All dealings during the offer period by an offeror or the offeree or by any associate of them for its own account are required under Rule 8.1 to be disclosed. Rule 8.1(c) currently provides an exemption from such disclosure in the case of a recognised market-maker, acting solely in that capacity, which is an associate of an offeror or the offeree only because it is interested in 5% or more of the relevant securities of the offeror or the offeree. With the proposed replacement of the term ñ*market-maker"* with ñ*principal trader*ò, the Panel is of the view that this exemption should no longer be available as it would be possible for a principal trader to be engaged in all forms of proprietary trading and not just that related to market-making. It is therefore proposed to amend Rule 8.1(c) as follows:

"(c) Dealings in relevant securities by an exempt principal trader ~~market-maker~~ connected with an offeror or the offeree shall be disclosed publicly in accordance with Rule 38.5. ~~A recognised market-maker which is an associate by virtue only of paragraph (i) of the definition of "associate" shall not be obliged to make a disclosure under Rule 8.1 provided that the market-maker acts solely in a market-making capacity in relation to the securities concerned.~~ "

(9) Rule 38.5 currently requires disclosure of dealings by a connected exempt market-maker. The level of disclosure required, as set out in the Rule 38.5 disclosure form, is of a less onerous nature than that required when disclosing under Rules 8.1 or 8.3. The reason for these less onerous disclosure requirements under Rule 38.5 is to protect the intermediary function of the exempt market-maker. However, as Rule 38 will be amended to apply to principal traders, this will not apply to the proprietary trading desk of an exempt principal trader. Therefore, the Panel is proposing to amend Rule 38.5 so that an exempt principal trader that has recognised intermediary status and is dealing in a client-serving capacity will continue to benefit from the less onerous disclosure requirements, whereas an exempt principal trader that does not have recognised intermediary status, or that does have that status but is not dealing in a client-serving capacity, will have to disclose the same level of detail as that required under Rule 8.1 and Rule 8.3.

Exempt principal traders are required to disclose dealings under Rule 38.5. However, the Rules do not expressly state its period of application. All Rule 8 disclosures are required to be made for the duration of the offer period and it is

intended to make a minor amendment to Rule 38.5 to make clear that the rule applies only during the offer period.

The proposed amended Rule 38.5 is set out below.

38.5 DISCLOSURE OF DEALINGS

"Dealings in relevant securities during the offer period by an exempt ~~market-maker~~ principal trader connected with an offeror or the offeree shall be aggregated and disclosed publicly by the principal trader ~~market-maker~~ in accordance with Rules 8.4(a) and 8.5(a), provided that where an offeror has announced that an offer or possible offer is, or is likely to be, wholly in cash, this Rule shall not require the disclosure of dealings in relevant securities of the offeror.

Such disclosure shall follow the format of the specimen disclosure form (Form 38.5(a)), as set out in Appendix 3, if the relevant trading desk has recognised intermediary status and is dealing in a client-serving capacity. If the relevant trading desk does not have recognised intermediary status, or if it does have that status but it is not dealing in a client-serving capacity, disclosure shall follow the format of the specimen disclosure form (Form 38.5(b)), as set out in Appendix 3.

In the case of dealings in options or derivatives, full details shall be given so that the nature of the dealings can be fully understood."

As a result of the above amendments, the existing Rule 38.5 disclosure form will be renumbered Form 38.5(a) (with references to exempt market makers being changed to exempt principal traders) and a new disclosure form, Form 38.5(b), will be required. The details that will be required to be disclosed under Form Rule 38.5(b) will be similar to those required to be disclosed under the Rule 8.1 and Rule 8.3 disclosure forms. Appendix 2 to this document contains copies of the existing disclosure Form 38.5, as proposed to be renumbered Form 38.5(a), and the proposed disclosure Form 38.5(b), including notes thereon, together with a Supplemental Form 38.5(b) (similar to the existing Supplemental Form 8).

It is also proposed to add the following note to Rule 38.5 by way of guidance in relation to the interests and short positions to be aggregated where an exempt principal trader with recognised intermediary status deals in relevant securities other than in a client-serving capacity.

"2. Recognised intermediaries dealing in a proprietary capacity

Where an exempt principal trader with recognised intermediary status deals in relevant securities otherwise than in a client-serving capacity, it should aggregate and disclose under Rule 38.5(b) the interests and short positions which it holds in a proprietary capacity with those of the group's exempt principal traders that do not have recognised intermediary status. However, in making such disclosures, it need not aggregate and disclose details of any interests or short positions which it holds in a client-serving capacity."

(10) In the acting in concert presumptions in Rule 3.3 of Part A, paragraph (b)(v) contains an exception for an exempt market-maker, which under the current proposals will be changed to exempt principal trader. This exception should be expressed to extend also to exempt fund managers. As proposed to be amended, the paragraph will read as follows:

"(v) a financial or other professional adviser (including a stockbroker) and, subject to Rule 7.2(b) of Part B, persons controlling, controlled by or under the same control as such adviser (except in any such case

in the capacity of an <u>exempt fund manager or</u> exempt principal trader ~~market-maker~~) with such adviser's client; provided that ….Ò

Consequentially upon the above amendments and the deletion of the term ñassociateò, it is proposed to amend Note 6 on Rule 8 as follows:

"6. ~~Market-makers and~~ rRecognised intermediaries

~~Where a recognised market-maker is an associate for any reason other than paragraph (i) of the definition of "associate" (see Rule 2.2 of Part A) but is not an exempt market-maker acting solely in a market-making capacity, he or she will have a disclosure obligatipn under Rule 8.1.~~

The exceptions ~~for recognised market-makers in Rule 8.1 and~~ for recognised intermediaries in Rule 8.3 must not be used to avoid or delay disclosure of dealings. For example, a dealing in relevant securities by such ~~a market-maker or~~ an intermediary, backed by a firm commitment by a person to purchase the relevant securities from the ~~market-maker or~~ intermediary, will be regarded as a dealing by that person. Such a commitment may be firm even if not legally binding, for example, because of market practice. Such arrangements, therefore, should not be entered into unless appropriate disclosures are to be made. In addition, if such an arrangement is entered into with an offeror or a person acting in concert with the offeror, it may mean that the ~~market-maker or~~ intermediary is acting in concert with the offeror, in which case normal concert party consequences would follow (such as the application of Rules 4, 5, 6, 7, 9, 11 and 24 and disclosure of dealings by the ~~market-maker or~~ intermediary under Rule 8.1)."

In the remainder of this section, it is assumed that the above changes have been effected.

8.3 Rule 7.2 and dealings for discretionary clients during an offer period

Under the presumptions of concertedness a fund manager or principal trader which is in the same group as an offeror or the offeree, or which is in the same group as a financial or other professional adviser to an offeror or the offeree, is presumed to be in concert with the offeror or the offeree, as the case may be.

In addition, under Note 1(e) on Rule 2.1 of Part A of the Rules, an investor in a consortium formed for the purpose of making an offer will normally be treated as acting in concert with the offeror, and if such an investor is part of a larger organisation, the Panel should be consulted to establish which other parts of the organisation will also be regarded as acting in concert.

Fund managers and principal traders that are controlled by, control or are under the same control as an offeror or the offeree are regarded under the Rules as ñ*connected*ò. The current definitions of ñ*connected fund managers*ò and ñ*connected principal traders*ò in Rule 2.3 of Part A (as amended in accordance with the changes proposed in section 8.2 above) are as follows:

"CONNECTED FUND MANAGERS AND CONNECTED ~~MARKET-MAKERS~~ <u>PRINCIPAL TRADERS</u>

For the purposes of these Rules, a fund manager or ~~market-maker~~ <u>principal trader</u> shall be deemed to be connected with an offeror or an offeree (as the case may be) if the fund manager or ~~market-maker~~ <u>principal trader</u> is controlled by, controls or is under the same control as:

(a) the offeror;

(b) the offeree;

(c) any bank or any financial or other professional adviser (including a stockbroker) which is acting in relation to the offer or possible offer concerned for the offeror or the offeree (not being a bank which is engaged only in the provision to the offeror or the offeree, as the case may be, of normal commercial banking services or in such activities in connection with the offer as confirming that cash is available, handling acceptances and other registration work); or

(d) an investor in a consortium formed for the purpose of making an offer;

and "connected fund manager" and "connected ~~market maker~~ principal trader" are to be construed accordingly."

The effect of a fund manager or principal trader being connected with an offeror or the offeree is that it is treated under the Rules as acting in concert with that offeror or with the offeree, as the case may be. However, if the fund manager or principal trader has been granted exempt status and if the sole reason for the fund manager or principal trader being connected is on account of paragraph (c) of the above definition, the presumption of concertedness between the connected fund manager or principal trader and the offeror or offeree will not apply. However, even when a connected entity benefits from exempt status certain obligations still arise under the Rules such as the requirement for a connected exempt principal trader to comply with Rule 38 and for a connected exempt fund manager to disclose all dealings privately to the Panel under Rule 8.1(b)(ii).

As a result of being presumed to be in concert, any shareholdings of, or dealings in relevant securities by, a connected fund manager or principal trader could have important consequences for the offeror or offeree with which the person is connected, unless the fund manager or principal trader benefits from exempt status. However, not all relevant fund managers or principal traders have exempt status. Also, exempt status is not relevant where the entity is in the same group as the offeror or the offeree itself or is in the same group as an investor in an offer consortium. Therefore, dealings by such non-exempt entities could have significant consequences.

Recognising this issue, Rule 7.2 provides that non-exempt discretionary fund managers connected with the offeror will be presumed to be acting in concert with the offeror after the identity of the offeror is publicly known. Similarly, a non-exempt discretionary fund manager connected with the offeree will during the offer period be presumed to be acting in concert with the directors of the offeree. The working assumption here is that before the nature of the connection is made public the fund manager should not be aware of the fact that the party with which it is connected might be involved in a takeover. Once the connection between the fund manager and the offeror or offeree is publicly known, the presumption of concertedness will apply as normal.

This therefore means that a potential offeror contemplating a bid does not need to be concerned about the consequences of dealings by a discretionary fund manager that might be connected with it until after its identity as an offeror is publicly announced. Equally, a fund manager may continue its normal dealing

activities without restraint until it becomes aware of the fact that it is connected with an offeror or offeree.

The current Rule 7.2 refers only to discretionary fund managers. The Panel believes that the Rule should be amended to extend it to non-exempt principal traders provided they are not aware of their possible connection with the offeror or offeree before any relevant public announcement.

The Panel is also proposing to amend Rule 7.2 so that the non-exempt connected fund manager or principal trader will be presumed to be in concert with the party to which it is connected prior to the identity of that party being publicly known if, at an earlier time, the connected party had reason to believe that the person with whom it is connected may make an offer or be the subject of an offer.

The Panel is also proposing to delete the reference to Rule 4 in Rule 7.2(a)(i) as there could be confusion, for example, as to when Rule 4.2(a) might apply in that context. The latter rule states, amongst other things, that, except with Panel consent, during an offer period neither the offeror nor any person acting in concert with it may sell any interest in relevant securities of the offeree.

The proposed amendments to Rule 7.2 are set out below.

"7.2 DEALINGS ~~FOR~~ BY CONNECTED DISCRETIONARY ~~CLIENTS~~ FUND MANAGERS AND PRINCIPAL TRADERS ~~DURING AN OFFER PERIOD~~

(a) (i)~~Without prejudice to the application of Rule 4,after the identity of an offeror is publicly known,a~~ A discretionary fund manager or a principal trader which is connected with the offeror shall, ~~during the remainder of the offer period~~, subject to paragraph (b), be presumed for the purposes of the Act (until the contrary is established to the satisfaction of the Panel) to be acting in concert with the offeror ~~in respect of investment accounts managed by such fund manager on a discretionary basis~~ once the identity of that offeror is publicly known or, if earlier, from the time at which the connected party had reason to believe that the person with whom it is connected may make an offer.

(ii) Similarly, a discretionary fund manager or a principal trader which is connected with the offeree shall during the offer period or, if earlier, from the time at which the connected party had reason to believe that an offer may be made in respect of the offeree and that it was connected with the offeree, subject to paragraph (b), be presumed for the purposes of the Act (until the contrary is established to the satisfaction of the Panel) to be acting in concert with the offeree ~~who are also shareholders of the offeree, in respect of investment accounts managed by such fund manager on a discretionary basis~~.

(iii) Fund managers and principal traders shall consult the Panel before dealing in securities of the offeree if an obligation under, or an infringement of, Rule 5, 6, 9 or 11.1(a)(iii) would or might be incurred or caused in consequence of such dealing.

(b) The presumptions in paragraph (a) and in Rule 3.3(b)(v) of Part A shall not apply to an exempt fund manager or an exempt principal trader which is connected with an offeror or offeree if the sole reason for that connection is that the fund manager or principal trader is controlled by, controls or is under the same control as a financial or other professional adviser (including a stockbroker) acting in relation to the offer for the offeror or (as the case may be) the offeree.

(c) Whilst paragraph (a)(i) may not, depending on the circumstances, apply to dealings ~~for~~ by discretionary ~~clients by~~ fund managers or principal traders connected with an offeror before its identity is publicly known, if, once that identity is publicly known, it becomes apparent that the securities of the offeree held by the offeror and persons acting in concert with it, including securities held ~~on behalf of~~ by

discretionary ~~clients by~~ fund managers or principal traders to which the presumption in paragraph (a)(i) applies, confer 30% or more of the voting rights in the offeree, the offeror shall consult the Panel immediately."

It is also proposed to add a new Note 3 to the Notes on Rule 7 to make clear that Rule 7.2 addresses the position of connected fund managers and principal traders who either do not have exempt status or whose exempt status is not relevant. The new note is set out below together with those amendments to Note 2 on Rule 7 which are necessary to reflect the changes to Rule 7.2 outlined above.

"2. Qualifications

"(a) If ~~an~~ ~~exempt~~ connected fund manager or principal trader is in fact acting in concert with an offeror or the offeree, the usual concert party consequences will follow.

(b) If an offeror or any company in its group has funds managed on a discretionary basis by an exempt fund manager, Rule 7.2 may be relevant. If, for example, any securities of the offeree are owned by the offeror through such exempt fund manager, the exception in Rule 7.2(b) in relation to exempt fund managers may not apply in respect of those securities. The Panel should be consulted in such cases.

(c) Where a fund manager or a principal trader is connected with an offeror by reason of paragraph (d) of the definition of "connected fund manager" or "connected ~~market makers~~ principal trader" (see Rule 2.2 of Part A), the Panel may, in appropriate circumstances, waive the acting in concert presumption in Rule 7.2(a), for example, where the ~~percentage of a funding group held by the fund manager~~ shareholding held in the consortium concerned is not considered by the Panel to be material in the circumstances ~~insignificant~~.

3. Rule 7.2

Rule 7.2 addresses the position of connected fund managers and principal traders who either do not have exempt status or whose exempt status is not relevant because the sole reason for the connection is not that referred to in Rule 7.2(b)."

Rule 7.2 therefore affords a relaxation of the usual presumptions of concertedness in respect of connected non-exempt discretionary fund managers and principal traders, such that dealings by such persons will normally be relevant for the purposes of the Rules only when the identity of the party with which they are connected is publicly known or, if earlier, from the time at which the connected party becomes aware of the possible transaction and its connection with one or other of the parties.

A number of the Rules currently have a note drawing attention to the position in relation to connected fund managers as set out in Rule 7.2. For example, Note 4 on Rules 4.1 and 4.2 provides as follows:

"4. Discretionary and other clients

Sales of securities of the offeree for discretionary clients by fund managers connected with the offeror, unless they are exempt fund managers, may be relevant. (See Rule 7.2)

Dealings on a ……..."

In the light of the proposals above to amend Rule 7.2, the Panel is proposing to amend each of the notes concerned. For example, Note 4 on Rules 4.1 and 4.2 would be amended as set out below:

"4. Discretionary ~~and other clients~~ fund managers and principal traders

~~Sales of securities of the offeree for discretionary clients~~ Dealings by discretionary fund managers or principal traders connected with the offeror, unless they are exempt ~~fund managers~~, may be relevant. (See Rule 7.2)

Dealings on a ……..."

Equivalent changes would be made to each of Note 4 on Rule 6, Note 10 on Rule 9.1, Note 2 on Rule 11 and Note 1 on Rule 36.2. These changes are set out in full in Appendix 4.

8.4 Dealings through anonymous trading systems

As referred to in section 8.1 above, under the presumptions of concertedness a principal trader in the same group as an adviser to an offeror will, unless it has exempt status, be presumed to be acting in concert with that offeror. Where the principal trader has exempt status, the group can continue both its normal dealing activities and its advisory role without concern for the usual consequences under the Rules that can apply in respect of dealings by concert parties of the offeror.

Rule 38 imposes certain restrictions on connected exempt principal traders. Rule 38.1 prohibits an exempt principal trader connected with an offeror or the offeree from carrying out any dealings with the purpose of assisting the offeror or the offeree in connection with the offer. Rule 38.2 prohibits an offeror or any person acting in concert with it from dealing as principal with an exempt principal trader connected with the offeror in relevant securities of the offeree. The note on Rule 38.2 states that it will generally be for the offeror and its advisers rather than the principal trader to ensure compliance with Rule 38.2.

If offerors and their concert parties were permitted to purchase relevant securities of the offeree through an anonymous order book system, there would be a potential risk that the prohibition in Rule 38.2 might be circumvented. This would be the case if the offeror or its advisers were to arrange with an exempt principal trader connected with the offeror for the latter to place sell orders on the order book and thereby to enable the offeror to purchase offeree securities from the connected exempt principal trader. To ensure compliance with Rule 38.2, offerors and persons acting in concert with them must not purchase offeree securities through an anonymous trading system (such as SETS) and should not purchase such securities through any other means unless it is established that the seller is not an exempt principal trader connected with the offeror. The Panel is therefore proposing that a new Rule 4.2(b) be added as follows:

"(b) During an offer period, neither the offeror nor any person acting in concert with it may acquire any interest in relevant securities of the offeree (i) through any anonymous order book system, or (ii) through any other means, unless, in either case, it can be established that the seller, or other party to the transaction in question, is not an exempt principal trader connected with the offeror.

In the case of dealings through an inter-dealer broker or other similar intermediary, "seller" includes the person who has transferred the securities to the intermediary as well as the intermediary itself."

The existing Rules 4.2(b) to (e) to be renumbered accordingly.

It is also proposed to cross-refer Rule 38.2 to Rule 4.2(b) by adding *"(See also Rule 4.2(b))"* at the end of the Note on 38.2.

8.5 Prohibition on the purchase of assented securities by exempt principal traders connected with the offeror

Rule 38.3 prevents an exempt principal trader connected with the offeror from assenting any securities owned by it to the offer until the offer has become unconditional as to acceptances. The Panel is proposing to amend the rule to prohibit such a principal trader from purchasing offeree securities which have been assented to the offer as it is possible that purchasing such assented securities could be undertaken to assist the offeror. For example, the exempt entity might purchase assented securities to ensure that the acceptance to the offer in respect of such assented securities would not be withdrawn if withdrawal rights were available or about to become available. Such purchases of assented securities would not necessarily be undertaken with the intention of assisting the offeror but the Panel believes that the Rule should be amended to avoid the risk of potential abuse. Consequently, the Panel is proposing to amend Rule 38.3 on the following basis:

38.3 ASSENTING SECURITIES

"An exempt ~~market-maker~~ principal trader connected with the offeror shall not assent any securities owned by it to the offer or purchase any securities of the offeree in assented form until the offer has become unconditional as to acceptances."

9. Miscellaneous Amendments

9.1 Mandatory bids and the 'chain principle' – Note 7 on Rule 9

Note 7 on Rule 9 sets out the factors that the Panel may take into consideration when determining whether to waive the requirement for an offer to be made under Rule 9 in circumstances where a person or group of persons acquire control of a company (which need not be a relevant company) and thereby acquire or consolidate control of a second company, which is a relevant company. Those factors are whether:

(i) *the holding in the second company represents a substantial part of the assets or profits of the first company*; or

(ii) *one of the main purposes of acquiring control of the first company was to secure control of the second company.*

The Panel is proposing to make certain amendments to Note 7 primarily for the purpose of bringing greater clarity to the interpretation of the note.

The term *'substantial'* can be subjective and it is proposed to clarify what would normally be regarded as substantial, i.e. relative values of 50% or more of the measures. In addition, it is proposed that the relative market value of the holding in the second company to the market value of the first company ought to be one of the criteria considered when determining whether or not to require a bid to be made.

The use of the term *'the main purpose'* can give rise to debate as it may be a subjective matter as to whether or not *'the main purpose'* was acquiring control of the second company. It is proposed to amend the wording to provide that "*securing control of the second company might reasonably be considered to be a significant purpose of acquiring control of the first company*".

It is also proposed to amend the note to clarify when statutory control applies and when "control" as defined under the Irish Takeover Panel Act 1997 applies.

The proposed amendments to Note 7 on Rule 9 covering these points are set out below

NOTES ON RULE 9.1- OTHER GENERAL CONSIDERATIONS

"7. The chain principle

A person or group of persons acquiring ~~control of~~ securities conferring more than 50% of the voting rights in a company (which need not be a relevant company) may thereby acquire or consolidate control, as defined in the Rules, of a second company, which is a relevant company because the first company, either directly or indirectly through intermediate companies, holds a controlling block, i.e. 30% or more, of the voting securities in the second company or holds securities which, when aggregated with those already held by the person or group, secure or consolidate control of the second company. In determining whether to ~~require an offer to be made~~ waive the obligation to make an offer under Rule 9 in these circumstances, factors which the Panel will take into account may include whether:

(a) the holding in the second company represents a substantial part of the assets, ~~or~~ profits or market value of the first company. Relative values of 50% or more will normally be regarded as substantial; or

(b) ~~one of the main purposes of acquiring control of the first company was to secure control of the second company~~ securing control of the second company might reasonably be considered to be a significant purpose of acquiring control of the first company.

The Panel should be consulted in all such cases to establish whether, in the circumstances, it is prepared to consent to a waiver of the resulting offer obligation under Rule 9.1."

9.2 Rule 15 offers and proposals

The Panel is of the view that an offeror who despatches an offer or proposal in accordance with Rule 15 should be obliged to announce that despatch. It is therefore proposed to amend Rule 15(c) as follows:

Rule 15. APPROPRIATE OFFER FOR CONVERTIBLES, OPTIONS AND SUBSCRIPTION RIGHTS

"(c) If practicable, the offeror shall despatch the offer or proposal to holders of convertible securities at the same time as the offer document is despatched to shareholders of the offeree, provided that if this is not practicable, the offeror shall consult the Panel and shall despatch the offer or proposal as soon as possible thereafter. Immediately following such despatch, ~~T~~the offeror shall (i) announce that the offer or proposal has been despatched to the holders of the convertible securities concerned and will be available for inspection in accordance with Rule 26 and (ii) lodge a copy of the offer or proposal with the Panel ~~at the time of issue~~."

It is also proposed that Rule 15 offers or proposals should be made available for inspection in accordance with Rule 26. For this purpose, Rule 26 would be amended as follows by the addition of a new Rule 26(b)(xiv) and the renumbering of existing subparagraph (b)(xiv):

RULE 26. DOCUMENTS TO BE ON DISPLAY

"(b) The following documents shall be made available for inspection in accordance with paragraph (a):
.....
(xiii)……; ~~and~~
(xiv) in the case of the offeror, each (if any) offer or proposal made by it in accordance with Rule 15: and ~~(xiv)~~ (xv)……"

It is proposed to include the following note on Rule 15 cross-referring to an offeror's obligation to make copies of Rule 15 offers or proposals available for inspection under Rule 26.

"NOTES ON RULE 15

1. Rule 16.2(d)
……..
2. Availability of offers and proposals for inspection

An offeror will be obliged under Rule 26(b)(xiv) to make an offer or proposal made by it in accordance with Rule 15 available for inspection from the time the offer document is published until the end of the course of the offer."

9.3 Material changes – Rule 27.1

Under Rule 27.1, documents sent to shareholders of the offeree by an offeror or the offeree must contain details of any material changes in information previously published by it or on its behalf. If there have been no such changes, a statement to this effect must made.

The rule also specifies certain matters that must be updated in any document published by the offeror or the offeree. The Panel is of the view that this list should be extended to include any known material changes in the financial or trading position of the company.

The proposed amendment to Rule 27.1 is set out below.

"27.1 MATERIAL CHANGES
(a)
(b) all known material changes in the financial or trading position (as referred to in Rules 24.2(a)(i)(4) and 25.8(a));
~~(b)~~ (c)

~~*(c)*~~*(d)*
~~*(d)*~~*(e)*
~~*(e)*~~*(f)*
~~*(f)*~~*(g)*
~~*(g)*~~*(h)"*

9.4 Settlement of Consideration – Rule 31.8

Rule 31.8 sets out the timeframe for payment of the consideration due to accepting shareholders once an offer has become unconditional in all respects.

In addition, the rule also requires that the offer document state the currency in which cheques will be issued and, if the cheques are not to be drawn on a bank in the State, the means of settlement of such cheques. The rule also states that, except with the consent of the Panel, cash consideration must be paid in euros. The Panel is of the view that these latter stipulations are no longer necessary or appropriate and consequently, proposes deleting the last paragraph of Rule 31.8 as shown below.

"31.8 SETTLEMENT OF CONSIDERATION

Except with the consent of the Panel, if an offer becomes unconditional in all respects the consideration relative to an acceptance shall be posted within 14 days after the later of:

(a) the first closing date for acceptance of the offer;

(b) the date on which the offer becomes unconditional in all respects; and

(c) the date of receipt of that acceptance complete in all respects.

~~***If cash forms part of the consideration, the offer document shall state the currency in which cheques will be issued and, if the cheques are not drawn on a bank in the State, the means of settlement of such cheques. Except with the consent of the Panel, an offeror shall not pay cash consideration in a currency other than euros."***~~

9.5 Debt Syndication during an Offer Period

Recently, the Panel has had occasion to consider the application and interpretation of certain of the Rules in the context of the syndication of debt financing during offer periods.

Issues arise under the Rules when the debt syndication is undertaken in two stages i.e. firstly, before the announcement of a firm intention to make an offer when the lead bank commits itself to providing the debt facilities required to implement the offer and secondly, following the announcement of a firm intention to make an offer when the lead bank seeks further lenders to participate in the facilities and to take a share of its financing commitment. As part of the process of seeking further lenders to take a share of the financing commitment, the lead bank will wish to distribute certain information in relation to the debt facilities required and to the offeror and offeree. This information would generally be more detailed than that normally provided to shareholders in the context of an offer and

may, for example, include forecasts and projections as part of a business plan for the offeree or for the enlarged group.

The process of syndicating the debt during an offer period raises issues under Rule 16 and Rule 20.1. Rule 16 provides that, except with Panel consent, an offeror or persons acting in concert with it may not make any arrangements with offeree shareholders or with any person who, whilst not a shareholder, is interested in relevant securities of the offeree if there would be attached to such arrangement a term favourable to such shareholder or such person which is not being extended under the offer to all offeree shareholders. If a syndicatee holds shares in the offeree, or acquires such shares during the offer period, then issues may arise under Rule 16. The Panelôs concern in this context is based on the possibility that favourable debt terms might be used as a means of providing additional value to a syndicatee in its capacity as an offeree shareholder. This would be the case if, for example, a syndicateeôs equity department agreed that it would accept a lower offer for its shares in the offeree than would otherwise have been the case because the syndicateeôs debt department was allocated a participation in the syndicate, perhaps on attractive terms. In addition, the Panel is concerned to ensure that the decision of a syndicateeôs equity department as to whether or not it should accept the offer should not otherwise be influenced by the participation of the syndicateeôs debt department in the syndicate.

Rule 20.1 provides, inter alia, that information about companies involved in an offer shall during the course of an offer be made equally available to all holders of shares in the offeree as nearly as possible at the same time and in the same manner. Clearly, the concern here is that the process of syndicating the debt may result in syndicatees who have an interest in the relevant securities of the offeree being provided with non-public information which has not been provided to all offeree shareholders.

The Panel is of the view that it would be helpful to practitioners to include a couple of notes in the Rules which would essentially set out the basic parameters which the Panel would set down when consenting to a debt syndication exercise to be undertaken during an offer period. The Panel is proposing that a new Note 4 on Rule 16.1 (as renumbered for the proposed amendments in section 3.4 above) and a new Note 5 on Rule 20.1 be inserted into the Rules by way of guidance to practitioners. The proposed notes are set out below**.**

NOTE 4 ON RULE 16.1

"4. Debt syndication during an offer period

The Panel may consider granting consent under Rule 16.1 to permit a syndicatee which is a shareholder or intending shareholder of the offeree or which is interested in relevant securities of the offeree to participate in a debt syndication undertaken on behalf of an offeror during an offer period, subject to:

(i) each of the syndicatees in the syndicate concerned having established effective information barriers, that comply with the minimum standards set down by the Panel, between the department of the syndicatee that is involved in making the decision in relation to the debt syndication and its department or departments that are responsible for trading, or making investment decisions in relation to, equity investments; and

(ii) each syndicatee having provided a written confirmation and undertaking to the mandated lead arranger for the transaction and to the Panel that such syndicatee has established effective information barriers that comply with the minimum standards set down by the Panel and that it will maintain those barriers so as to ensure that confidential information received by it in the course of the transaction is not accessed by or shared with persons or entities within any of its equity departments.

See also Note 5 on Rule 20.1."

NOTE 5 ON RULE 20.1

"5. Debt syndication during an offer period

The Panel may consider granting a derogation from Rule 20.1 to permit the provision, on behalf of an offeror, of non-public information to members of a syndicate, subject to:

(i) each of the syndicatees in the syndicate concerned having established effective information barriers, that comply with the minimum standards set down by the Panel, between the department of the syndicatee that is involved in making the decision in relation to the debt syndication and its department or departments that are responsible for trading, or making investment decisions in relation to, equity investments; and

(ii) each syndicatee having provided a written confirmation and undertaking to the mandated lead arranger for the transaction and to the Panel that such syndicatee has established effective information barriers that comply with the minimum standards set down by the Panel and that it will maintain those barriers so as to ensure that confidential information received by it in the course of the transaction is not accessed by or shared with persons or entities within any of its equity departments.

Where a syndicatee has no interest in the relevant securities of the offeree, in order to avoid any possible breach of Rule 20.1 the Panel may require the syndicatee to provide the above confirmation and undertaking or to undertake to the Panel that it will not acquire an interest in relevant securities of the offeree during the offer period without the consent of the Panel.

See also Note 4 on Rule 16.1."

The Panel will inform parties of the minimum standards required in relation to effective information barriers on a case by case basis. It is likely that the Panel will impose the primary responsibility for ensuring compliance with the above requirements on the financial adviser to the offeror.

Appendix 1

Schedule comparing categories of "*associate*" and "*acting in concert*" presumptions

"Associate"	Acting in concert presumptions
(a) is the holding company, a subsidiary or a subsidiary of the holding company, of the offeror or the offeree; (b) is an associated company of the offeror, of the offeree or of an associate of the offeror or the offeree described in paragraph (a); (c) is a company of which the offeror, the offeree or an associate of the offeror or the offeree described in paragraph (a) or (b) is an associated company;	(i) a company, its holding company, its subsidiaries and subsidiaries of its holding company, every associated company of any of the foregoing companies, and every company of which any of the foregoing companies is an associated company: all with each other;
(d) is a bank or a financial or other professional adviser (including a stockbroker) which is acting in relation to the offer or possible offer concerned for the offeror or offeree or for an associate of the offeror or offeree described in paragraph (a), (b) or (c) (not being a bank which is engaged only in the provision to the offeror, the offeree or such associate, as the case may be, of normal commercial banking services or in such activities in connection with the offer as confirming that cash is available, handling acceptances and other registration work) provided that, in the case of an adviser which is a partnership, only those partners and professional staff who are actively engaged in relation to the offer or who are customarily engaged in the affairs of the relevant client or who have been engaged in those affairs within the period of two years prior to the commencement of the relative offer period shall be deemed to be associates of the of the offeror or the offeree (as the case may be);	(v) a financial or other professional adviser (including a stockbroker) and, subject to Rule 7.2(b) of Part B, persons controlling, controlled by or under the same control as such adviser (except in any such case in the capacity of an exempt market-maker) with such adviser's client; provided that, in the case of an adviser which is a partnership, the presumption shall apply to those partners and professional staff who are actively engaged in relation to the transaction concerned or who are customarily engaged in the affairs of the relevant client or who have been engaged in those affairs within the period of two years prior to the commencement of the relative offer period in the case of an offer or to the time of the transaction in any other case;
(e) is a person controlling, controlled by, or under the same control as, an associate of the offeror or offeree described in paragraph (d);	(v) as above
(f) is (i) a director of the offeror, of the offeree or of any associate of the offeror or of the offeree described in paragraph (a), (b) or (c); (ii) the spouse or a parent, brother, sister or child of any such director; (iii) a trustee of a trust (including a discretionary trust) of which any such director or any such member of his or her family is a beneficiary or a potential beneficiary; or (iv) a company controlled by any one or more of such directors, such members of their families and the trustees of all such trusts;	(ii) a company, and each company with which the first mentioned company is presumed in accordance with sub-paragraph (i) to be acting in concert, with (1) each of the directors of the first mentioned company; (2) the spouse, parents, brothers, sisters and children of each such director; (3) the trustees of every trust (including a discretionary trust) of which any such director or any such member of his or her family is a beneficiary or a potential beneficiary; and (4) every company which is controlled by any one or more of such directors, such members of their families and the trustees of all such trusts;
(g) is a trustee of any pension scheme (other than an industry- wide scheme) in which the offeror, the offeree or any associate of the offeror or the offeree described in paragraph (a), (b) or (c) participates;	(iii) a company, and each company with which it is presumed in accordance with sub-paragraph (i) to be acting in concert, with the trustees of every pension scheme (other than an industry-wide scheme) in which the first mentioned company participates;

(h) is a collective investment scheme or other person the investments of which the offeror or the offeree or any associate of the offeror or offeree manages on a discretionary basis, in respect of the relevant investment accounts	(iv) a fund manager (including an exempt fund manager) and persons controlling, controlled by or under the same control as such fund manager with any other person (including a collective investment scheme) where such fund manager manages investments on a discretionary basis on behalf of such other person, in respect of the relevant investment accounts;
(i) is interested, or together with one or more other persons acting in concert with him or her is interested in 5% or more of any class of relevant securities of the offeror or the offeree;	No equivalent but would be caught under Rule 8.3
(j) is a party to an arrangement to which Rule 8.7 of Part B applies with any offeror or with an associate of any offeror in respect of relevant securities, or is a party to such an arrangement with the offeree or with an associate of the offeree in respect of relevant securities;	No equivalent
(k) has a material business relationship with the offeror or the offeree; or	No equivalent
(I) (not falling within paragraphs (a) to (k)) is interested or deals in relevant securities of an offeror or the offeree and has, in addition to his or her normal interest as an investor in securities, an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer or possible offer concerned.	No equivalent

Appendix 2

Disclosure Forms 38.5(a) and 38.5(b) and Supplemental Form 38.5(b)

Part 1

Disclosure Form 38.5(a)

FORM 38.5 (a)

IRISH TAKEOVER PANEL

DISCLOSURE UNDER RULE 38.5(a) OF THE IRISH TAKEOVER PANEL ACT, 1997, TAKEOVER RULES, 2007 (AS AMENDED)

DEALINGS BY CONNECTED EXEMPT PRINCIPAL TRADERS

1. KEY INFORMATION

Name of exempt principal trader	
Company dealt in	
Class of relevant security to which the dealings being disclosed relate (Note 1)	
Date of dealing	

2. DEALINGS (Note 2)

(a) Purchases and sales

Total number of relevant securities acquired	**Highest price paid** (Note 3)	**Lowest price paid** (Note 3)

Total number of securities disposed	**Highest price received** (Note 3)	**Lowest price received** (Note 3)

(b) Derivatives transactions (other than options transactions)

Product name, e.g. CFD	**Nature of transaction** (Note 4)	**Number of relevant securities** (Note 5)	**Price per unit** (Note 3)

(c) Options transactions in respect of existing relevant securities

(i) Writing, selling, purchasing or varying

Product name, e.g. call option	**Writing, selling, purchasing, varying etc.**	**Number of securities to which the option relates** (Note 5)	**Exercise price**	**Type, e.g. American, European etc.**	**Expiry date**	**Option money paid/received per unit** (Note 3)

(ii) Exercising

Product name, e.g. call option	**Number of securities**	**Exercise price per unit** (Note 3)

3. OTHER INFORMATION

Agreements, arrangements or understandings relating to options or derivatives

Full details of any agreement, arrangement or understanding between the person disclosing and any other person relating to the voting rights of any relevant securities under any option referred to on this form or relating to the voting rights or future acquisition or disposal of any relevant securities to which any derivative referred to on this form is referenced. If none, this should be stated.

Date of disclosure	
Contact name	
Telephone number	
Name of offeree/offeror with which connected	
Nature of connection (Note 6)	

The Notes on Form 38.5(a) can be viewed on the Panel's website at www.irishtakeoverpanel.ie

NOTES ON FORM 38.5(a)

1. *See the definition of "relevant securities" in Rule 2.1 of Part A of the Rules.*

2. *See the definition of "dealing" in Rule 2.1 of Part A of the Rules.*

3. *For all prices and other monetary amounts, the currency must be stated.*

4. *If a long position has been increased or decreased as a result of the dealing, write "increased long" or "decreased long" respectively. If a short position has been increased or decreased as a result of the dealing, write "increased short" or "decreased short" respectively. If the dealing has not resulted in a long or short position being increased or reduced, give details of the variation or other dealing.*

5. *See Rule 2.6(d) of Part A of the Rules.*

6. *See the definition of "connected principal trader" in Rule 2.2 of Part A of the Rules.*

For full details of disclosure requirements, see Rules 8 and 38.5 of the Rules. If in doubt, consult the Panel.

References in these notes to "the Rules" are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2007 (as amended).

Appendix 2 (continued)
Part 2
Disclosure Form 38.5(b) and Supplemental Form 38.5(b)

FORM 38.5 (b)

IRISH TAKEOVER PANEL

DISCLOSURE UNDER RULE 38.5(b) OF THE IRISH TAKEOVER PANEL ACT, 1997, TAKEOVER RULES, 2007 (AS AMENDED)

DEALINGS BY PERSONS WITH INTERSTS IN RELEVANT SECURITIES REPRESENTING 1% OR MORE

1. KEY INFORMATION

Name of exempt principal trader	
Company dealt in	
Class of relevant security to which the dealings being disclosed relate (Note 1)	
Date of dealing	

2. INTERESTS AND SHORT POSITIONS

(**a**) **Interests and short positions (following dealing) in the class of relevant security dealt in** (Note 2)

	Long		**Short**	
	Number	**(%)**	**Number**	**(%)**
(1) Relevant securities				
(2) Derivatives (other than options)				
(3) Options and agreements to purchase/sell				
Total				

(**b**) **Interests and short positions in relevant securities of the company, other than the class dealt in** (Note 2)

Class of relevant security:	**Long**		**Short**	
	Number	**(%)**	**Number**	**(%)**
(1) Relevant securities				
(2) Derivatives (other than options)				
(3) Options and agreements to purchase/sell				
Total				

3. Dealings (Note 3)

(**a) Purchases and sales**

Purchase/sale	**Number of relevant securities**	**Price per unit** (Note 4)

(**b) Derivatives transactions (other than options transactions)**

Product name, e.g. CFD	**Nature of transaction** (Note 5)	**Number of relevant securities** (Note 6)	**Price per unit** (Note 4)

(**c) Options transactions in respect of existing relevant securities**

(i) Writing, selling, purchasing or varying

Product name, e.g. call option	**Writing, selling, purchasing varying etc.**	**Number of securities to which the option relates**	**Exercise price**	**Type, e.g. American, European etc.**	**Expiry date**	**Option money paid/received per unit** (Note 4)

(ii) Exercising

Product name, e.g. call option	**Number of securities**	**Exercise price per unit** (Note 4)

(**d) Other dealings (including transactions in respect of new securities) (Note 3)**

Nature of transaction (Note 7)	**Details**	**Price per unit (if applicable)** (Note 4)

4. OTHER INFORMATION

Agreements, arrangements or understandings relating to options or derivatives

Full details of any agreement, arrangement or understanding between the person disclosing and any other person relating to the voting rights of any relevant securities under any option referred to on this form or relating to the voting rights or future acquisition or disposal of any relevant securities to which any derivative referred to on this form is referenced. If none, this should be stated.

Is a Supplemental Form 38.5(b) attached? (Note 8) **YES/NO**

Date of disclosure	
Contact name	
Telephone number	
Name of offeree/offeror with which connected	
Nature of connection (Note 9)	

The Notes on Form 38.5(b) can be viewed on the Panel's website at www.irishtakeoverpanel.ie

NOTES ON FORM 38.5 (b)

1. *See the definition of "relevant securities" in Rule 2.1 of Part A of the Rules.*

2. *See the definition of "interest in a relevant security" in Rule 2.6 of Part A of the Rules and see Rule 8.6(a) of Part B of the Rules. If an option over new securities is acquired or exercised, the relevant interest should be disclosed under "(1) Relevant securities". If an option over existing relevant securities is acquired or exercised, the relevant interest should be disclosed under "(3) Options and agreements to purchase/sell".*

3. *See the definition of "dealing" in Rule 2.1 of Part A of the Rules.*

4. *For all prices and other monetary amounts, the currency must be stated.*

5. *If a long position has been increased or decreased as a result of the dealing, write "increased long" or "decreased long" respectively. If a short position has been increased or decreased as a result of the dealing, write "increased short" or "decreased short" respectively. If the dealing has not resulted in a long or short position being increased or reduced, give details of the variation or other dealing.*

6. *See Rule 2.6(d) of Part A of the Rules.*

7. *State type of dealing, e.g. "subscription", "conversion", "exercise" etc.*

8. *Where there are open option positions or open derivative positions (other than CFDs), or where there is an agreement to purchase or to sell, Supplemental Form 38.5(b) must be completed.*

9. *See the definition of "connected principal trader" in Rule 2.2 of Part A of the Rules.*

For full details of disclosure requirement, see Rules 8 and 38.5 of the Rules. If in doubt, consult the Panel.

References in these notes to "the Rules" are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2007 (as amended).

Appendix 2 (continued)

SUPPLEMENTAL FORM 38.5(b)

IRISH TAKEOVER PANEL

DISCLOSURE UNDER RULE 38.5(b) OF THE IRISH TAKEOVER PANEL ACT, 1997, TAKEOVER RULES, 2007 (AS AMENDED)

DETAILS OF OPEN POSITIONS

(This form should be attached to Form 38.5(b))

OPEN POSITIONS (Note 1)

Product name, e.g. call option	**Written or purchased**	**Number of relevant securities to which the option or derivative relates**	**Exercise price** (Note 2)	**Type, e.g. American, European etc.**	**Expiry date**

Notes

1. *Where there are open option positions or open derivative positions (except for CFDs), full details should be given. Full details of any existing agreements to purchase or to sell must also be given on this form.*
2. *For all prices and other monetary amounts, the currency must be stated.*

For full details of disclosure requirements, see Rule 8 and Rule 38.5 of the Rules. If in doubt, consult the Panel

Appendix 3

FULL TEXT OF PROPOSED NEW RULES

IRISH TAKEOVER PANEL ACT 1997
TAKEOVER (AMENDMENT) RULES [•]

1. **CITATION, CONSTRUCTION AND COMMENCEMENT**

1.1 These Rules may be cited as the Irish Takeover Panel Act 1997 Takeover (Amendment) Rules [•].

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

1.3 These Rules shall come into operation on [•] .

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, the Irish Takeover Panel Act 1997 Takeover (Amendment) (No. 2) Rules 2008 and [•].

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**

3.1 Rule 2.1 of Part A is hereby amended as follows:

(a) by the substitution for the definition of "exempt market-maker" in paragraph (a) of the following new definition:

"**exempt principal trader"** means a principal trader who is recognised by the Panel as an exempt principal trader for the purposes of these Rules, has been notified in writing of that fact by the Panel and has not been notified by the Panel of the withdrawal of such recognitions;";

(b) by the insertion, after the definition of "parties to a takeover or other relevant transaction" in paragraph (a), of the following new definition:

"**principal trader"** means a persons who is registered as a market-maker with the Irish Stock Exchange or the London Stock Exchange plc, or is accepted by the Panel as a market-maker, or is a member firm of either of such stock exchanges dealing as principal in order book securities;"; and

(c) by the substitution of "(iv)(3)" for "(iv)(3)(B)" in paragraph (c)(iii).

3.2 Rule 2 of Part A of the 2007 Rules is hereby amended by the deletion of Rule 2.2 in its entirety and by the renumbering of existing Rules 2.3 to 2.7 of Part A as Rules 2.2 to 2.6 respectively and by consequentially so renumbering (unless expressly so renumbered) all other references to any of those existing Rules 2.3 to 2.7 in Part A or Part B of the 2007 Rules.

3.3 Rule 2.2 (as renumbered as above) of Part A is hereby amended by the substitution of "CONNECTED PRINCIPAL TRADERS" for "CONNECTED MARKET-MAKERS" in the heading, of "principal trader" for "market-maker" wherever that occurs and of "connected principal trader" for "connected market-maker".

3.4 Rule 3.2 of Part A of the 2007 Rules is hereby amended as follows:

(a) by the deletion of paragraph (a);

(b) by the renumbering of paragraphs (b) to (o) as paragraphs (a) to (n) respectively;

(c) by replacing the reference in paragraph (n) (as so renumbered) to "paragraphs (a) to (n)" with "paragraphs (a) to (m)"; and

and the 2007 Rules are hereby amended by consequentially so renumbering (unless expressly so renumbered) all other references to any of those paragraphs (b) to (o) in Part A or B of the 2007 Rules as paragraphs (a) to (n) respectively.

3.5 Rule 3.3 of Part A of the 2007 Rules is hereby amended in paragraph (b)(v) by the substitution of "(except in any such case in the capacity of an exempt fund manager or exempt principal trader) for "(except in any such case in the capacity of an exempt market-maker)".

4. **AMENDMENT OF PART B OF THE 2007 RULES**

4.1 Rule 5.2 is hereby amended by the substitution for subparagraph (3) in paragraph (a)(iv) of the following new subparagraph:

"(3) the first closing date of that offer or of any competing offer has passed; or".

4.2 Rule 11 is hereby amended as follows:

(a) by the substitution for the heading of the rule of the following new heading:

"**RULE 11. NATURE OF CONSIDERATION TO BE OFFERED – VOLUNTARY OFFERS**";

(b) by the insertion under that new heading of the following new subheading which shall apply to the entirety of the existing rule:

"**11.1 WHEN A CASH OFFER IS REQUIRED**";

(c) by the substitution of "Rule 11.1" for "Rule 11" wherever it occurs in Rule 11.1;

(d) by the substitution of "**Rule 11.1 relevant period**" for "**relevant period**" wherever that expression occurs in Rule 11.1, including its definition in paragraph (a)(i);

(e) by the substitution in paragraph (a) for the words "shall be in cash, or accompanied by a cash offer. The price per security under such offer" of "shall, without prejudice and in addition to any obligation of the offeror arising under Rule 11.2, be in cash, or accompanied by a cash alternative offer. The price per security under such offer or cash alternative offer"; and

(f) by the insertion after Rule 11.1 of the following new Rule 11.2:

11.2 WHEN A SECURITIES EXCHANGE OFFER IS REQUIRED

(a) Except with the consent of the Panel in cases falling under subparagraph (i) or (iii), if in the case of a voluntary offer:

(i) the offeror or any person acting in concert with it has acquired , during the period (in Rule 11.2 referred to as the "Rule 11.2 relevant period") of three months prior to the commencement of the offer period and in exchange for securities, securities of the offeree of any class the subject of the offer which represent in the aggregate 10% or more in nominal value of the issued securities of that class, excluding treasury shares; or

(ii) the offeror or any person acting in concert with it has acquired:

(1) during the Rule 11.2 relevant period and in exchange for securities, securities of the offeree of any class the subject of the offer which represent in the aggregate less than 10% in nominal value of the issued securities of that class, excluding treasury shares; or

(2) during a period (the "extended Rule 11.2 relevant period") of more than three but not more than 12 months prior to the commencement of the offer period and in exchange for consideration securities, securities of the offeree of any class the subject of the offer which represent in the aggregate 10% or more in nominal value of the issued securities of that class, excluding treasury shares, and the Panel, having regard in such case to the General Principles, considers that it is just and proper so to direct and accordingly so directs; or

(iii) the offeror or any person acting in concert with it has acquired, during the offer period and in exchange for securities, securities of the offeree of any class the subject of the offer,

the offer, or an alternative offer, made or to be made by the offeror to holders of securities of the offeree of that class shall, without prejudice and in addition to any obligation of the offeror arising under Rule 11.1, be made in exchange for securities ("exchange securities") of the same issuer and of the same class as the securities (the "consideration securities") delivered by the offeror or (as applicable) the person acting in concert with it in exchange for the securities of the offeree acquired by the offeror or that person as described in subparagraph (i), (ii)(1) or (2) 0r (as applicable) (iii) above. All such exchange securities shall be offered on the basis of a ratio of exchange securities to securities of the offeree that is equal to the highest ratio of the consideration securities delivered by the offeror or any person acting in concert with it in exchange for securities of the offeree in any acquisition made by the offeror or any person acting in concert with it during:

(1) the Rule 11.2 relevant period, if subparagraph (i) or (ii)(1) alone is applicable;

(2) the extended Rule 11.2 relevant period if subparagraph (ii)(2) alone is applicable;

(3) the offer period, if subparagraph (iii) alone is applicable;

(4) the Rule 11.2 relevant period or the offer period, if subparagraph (i) or (ii)(1) and subparagraph (iii) are applicable; or

(5) the extended Rule 11.2 relevant period or the offer period, if subparagraph (ii)(2) and subparagraph (iii) are applicable.

(b) Where any securities of the offeree the subject of the offer are or have been acquired by the offeror or any person acting in concert with it for a consideration consisting of a mixture of consideration securities and other consideration, the Panel may, for the purposes of paragraph (a) deem a proportion of the securities so acquired to have been acquired for securities, which proportion shall (so far as practicable) equal the proportion of the value of the total consideration for the securities acquired that consisted of consideration securities or shall be such other proportion as the Panel may deem to be appropriate in the circumstances; and Rule 6.2(e) shall apply for the purposes of this paragraph (b) as if the reference in that paragraph to Rule 6.1 were a reference to this paragraph.

(c) References in paragraph (a)(i) to (iii) to securities exchanged by an offeror or a person acting in concert with it for securities of the offeree include references to new or existing securities and to securities of the offeror, of a person acting in concert with it or of any other person.

(d) Paragraphs (d), (f), (g) and (h) of Rule 11.1 shall apply mutatis mutandis for the purposes of Rule 11.2. "

4.3 Rule 15 is hereby amended in paragraph (c) by the substitution for the second sentence of the following sentence:

"Immediately following such despatch, the offeror shall (i) announce that the offer or proposal has been despatched to the holders of the convertible securities concerned and

will be available for inspection in accordance with Rule 26 and (ii) lodge a copy of the offer or proposal with the Panel."

4.4 Rule 16 is hereby amended as follows:

(a) by the substitution for the heading of the rule of the following new heading:

"**RULE 16. SPECIAL ARRANGEMENTS AND MANAGEMENT INCENTIVISATION**";

(b) by the insertion under that new heading of the following new subheading which shall apply to the entirety of the existing rule:

"**16.1 SPECIAL ARRANGEMENTS WITH FAVOURABLE TERMS**";

(c) by the insertion at the end of Rule 16.1 of the following sentence:

"For the avoidance of doubt, this rule does not require that the benefit of any such arrangement be extended to any person in respect of any relevant securities of the offeree in which that person is interested but of which he or she is not a holder."; and

(d) by the insertion after Rule 16.1 of the following new Rule 16.2:

"**16.2 MANAGEMENT INCENTIVISATION**

(a) Except with the consent of the Panel and subject to paragraphs (b) and (c), where an offeror has entered into, or reached an advanced stage of discussions on proposals to enter into, any form of incentivisation arrangements with any members of the management of the offeree who are interested in relevant securities of the offeree, no such arrangements or proposals ("**management incentivisation arrangements or proposals**") shall be implemented unless the offeror has disclosed relevant details of them in the offer document and the independent adviser to the offeree has stated publicly that in its opinion the arrangements or proposals are fair and reasonable. If it is intended to put management incentivisation arrangements in place following completion of the offer, but either no discussions or only limited discussions have taken place, that fact shall be stated, and relevant details of the discussions (if any) shall be disclosed, in the offer document. Where no such arrangements are proposed, that fact shall be disclosed in the offer document.

(b) (i) The Panel, having regard to the General Principles, may require that any management incentivisation arrangements or proposals be approved at a general meeting of the offeree shareholders.

(ii) Without prejudice to subparagraph (i), where any members of the management of the offeree are interested in relevant securities of the offeree and, as a result of implementation of any management incentivisation arrangements or proposals, they would , apart from this paragraph, become shareholders of the offeror on a basis that is not being made available to other offeree shareholders, the implementation of such arrangements or proposals shall be subject

to their having been approved at a general meeting of the offeree shareholders.

(iii) Every shareholder approval required by this rule shall be by a separate vote of independent shareholders, taken on a poll.

(c) Where, following the publication of the offer document and before completion of the offer, there is a change in the terms of any agreed or proposed management incentivisation arrangements or proposals or the offeror enters into, or reaches an advanced stage of discussion on proposals to enter into, any form of such arrangements, the offeror shall consult the Panel. The Panel may require, as a condition of the implementation of the arrangements or proposals, that the offeror disclose relevant details of all such changes to the arrangements or (as the case may be) of newly agreed or proposed arrangements and the status of any discussions between the parties, that the independent adviser to the offeree state publicly that in its opinion the arrangements or proposals are fair and reasonable and, if the Panel considers it appropriate, that such arrangements or proposals be approved at a general meeting of the offeree shareholders.

(d) Where members of management of the offeree are to receive securities of the offeror pursuant to an appropriate offer or proposal made in accordance with Rule 15, paragraphs (a), (b) and (c) shall not apply to that offer or proposal, but the offer or proposal shall not be implemented unless the offeror has publicly disclosed details of it and the independent adviser to the offeree has stated publicly that in its opinion the offer or proposal is fair and reasonable.

(e) The offeror shall be obliged to consult the Panel in all cases referred to above, except in circumstances to which paragraph (b)(ii) or (d) above is applicable**."**

4.5 Rule 20.2 is hereby amended as follows:

(a) by the insertion after paragraph (a) of the following new paragraphs (b) and (c):

"(b) (i) Except as provided in subparagraph (ii) below, the provision of information by the offeree board pursuant to this Rule shall not be made by it subject to any condition other than those relating to: the confidentiality of the information provided; reasonable restrictions prohibiting the use of the information provided to solicit customers or employees; and the use of the information solely in connection with an offer in respect of the offeree. No such condition shall be any more onerous than those imposed by the offeree board upon all other offerors.

(ii) The provision of information pursuant to this Rule may be made subject to a requirement that the offeror sign a hold harmless letter in favour of a firm of accountants or other third party, provided that every other offeror to which the offeree board has provided such information has been required to sign a letter in the same or substantially similar form.

(c) Where an offer or possible offer (the "**first offer**") would or might oblige the offeror to increase by 100% or more its existing issued share capital that confers voting rights, a person who makes an offer (the "**second offer**") in respect of either the offeror or the offeree in the first offer (the "**target**") shall (if the target is

a relevant company and paragraph (a) is not otherwise applicable) in connection with the second offer have the same right under paragraph (a) to receive information made available by the target to the other party to the first offer in connection with that offer as if the target were an offeree that had previously made the information available to another offeror in connection with an offer in respect of the target."; and

(b) by renumbering existing paragraph (b) as paragraph (d).

4.6 Rule 25 is hereby amended as follows:

(a) by the deletion from paragraph (c) in Rule 25.4 of the paragraph following subparagraph (v) and commencing with the words "If there is more than one contract"; and

(b) by the insertion after Rule 25.7 of the following new Rule 25.8:

"**25.8 FINANCIAL INFORMATION ON THE OFFEREE**

(a) The offeree board shall include in the first response circular a statement of all known material changes in the financial or trading position of the offeree subsequent to the last published audited accounts or a statement that there are no known material changes.

(b) Where the first response circular is combined with the offer document, the offeror shall not be required to comply with Rule 24.2(c) insofar as it relates to Rule 24.2(a)(i)(4)."

4.7 Rule 24.2 is hereby amended by the insertion of "subject to Rule 25.8(b)," at the beginning of paragraph (c).

4.8 Rule 26(b) is hereby amended by:

(a) by the deletion of "and" at the end of paragraph (xiv);

(b) by the insertion after paragraph (xiii) of the following new paragraph (xiv):

"(xiv) in the case of the offeror, each (if any) offer or proposal made by it pursuant to Rule 15; and "; and

(c) by the renumbering of paragraph (xiv) as paragraph (xv).

4.9 In Rule 27.1 insert the following new paragraph (b):

"(b) all known material changes in the financial or trading position (as referred to in Rules 24.2(a)(i)(4) and 25.8(a));";

and renumber existing paragraphs (b) to (g) as paragraphs (c) to (h) respectively.

4.10 Rule 31 is hereby amended as follows:

(a) in Rule 31.5:

(i) by the substitution in paragraph (a) of "Subject to paragraphs (b), (c) and (d)" for "Subject to paragraphs (b) and (c)";

(ii) by the substitution in paragraph (d) of "An offeror may choose not to bound by a no extension statement in any given circumstances only if it has specifically reserved the right to do so in such circumstances at the time at which the statement was made and such circumstances subsequently arise" for "An offeror may choose not to be bound by a no extension statement in the circumstances set out in paragraph (b) or (c) only if it has specifically reserved the right to do so in such circumstances at the time at which the statement was made"; and

(iii) by the insertion of the following new paragraph (e):

"(e) If, after the offeree has made a no extension statement, the offeree makes an announcement of the kind referred to in Rule 31.9 after the 39th day, the offeror may (subject to the foregoing paragraphs and to any applicable consent of the Panel under Rule 31.6(a)(i)), choose not to be bound by its no extension statement and to be free to extend its offer, provided hat, if it determines to make such an extension, it makes an announcement to that effect as soon as possible, and in any event within 4 business days after the offeree's announcement, and notifies shareholders of the offeree in writing at the earliest opportunity."; and

(b) in Rule 31.8 by the deletion of the final paragraph which commences with the words "if cash forms part".

4.11 Rule 32.2 is hereby amended as follows:

(a) by the substitution in paragraph (a) of "Subject to paragraphs (b), (c) and (d)" for "Subject to paragraphs (b) and (c)";

(b) by the substitution in paragraph (d) of "An offeror may choose not to bound by a no increase statement in any given circumstances only if it has specifically reserved the right to do so in such circumstances at the time at which the statement was made and such circumstances subsequently arise" for "An offeror may choose not to be bound by a no increase statement in the circumstances set out in paragraph (b) or (c) only if it has specifically reserved the right to do so in such circumstances at the time at which the statement was made"; and

(c) by the insertion of the following new paragraph (e):

"(e) If, after the offeree has made a no increase statement, the offeree makes an announcement of the kind referred to in Rule 31.9 after the 39th day, the offeror may (subject to the foregoing paragraphs and to any applicable consent of the Panel under Rule 31.6(a)(i)), choose not to be bound by its no increase statement and to be free to revise its offer, provided hat, if it determines to make such an increase, it makes an announcement to that effect as soon as possible, and in any event within 4 business days after the offeree's announcement, and notifies shareholders of the offeree in writing at the earliest opportunity."

4.12 The 2007 Rules are hereby amended as follows:

(a) in Rule 2.1(a) by the substitution of ", the respective persons acting in concert with them and their respective advisers" for "and their respective associates and advisers";

(b) in Rule 4.4 by the substitution in the heading of "**CERTAIN PERSONS RELATED TO THE OFFEREE**" for "**CERTAIN ASSOCIATES OF THE OFFEREE**" and by the substitution of "exempt principal trader" for "exempt market-maker";

(c) in Rule 8.1 by the substitution for the existing heading of the following new heading, namely, "**DEALINGS BY PARTIES AND BY PERSONS ACTING IN CONCERT WITH THEM FOR THEMSELVES OR FOR DISCRETIONARY CLIENTS**";

(d) in Rule 8.2 by the substitution for the existing heading of the following new heading, namely, "**DEALINGS BY PARTIES AND BY PERSONS ACTING IN CONCERT WITH THEM FOR NON-DISCRETIONARY CLIENTS**";

(e) in Rules 8.1(a) and 8.1(b)(i) by the substitution of "or by any party acting in concert with either of them" for "or by any associate of either of them";

(f) in Rule 8.1(b)(ii) by the substitution for subparagraph (ii) of the following paragraph:

"(ii) Subject to Rule 8.9, all dealings in relevant securities for the account of discretionary clients during an offer period by an exempt fund manger connected with the offeror or the offeree shall be privately disclosed in accordance with Rules 8.4 to 8.6 except where 8.3 applies.";

(g) in Rule 8.2 by the substitution of "or by any party acting in concert with either of them" for "or by any associate of either of them", and by the substitution of "and any party acting in concert with either of them" for "and any associate of either of them";

(h) in Rule 8.3(a) by the substitution of "(whether or not acting in concert with the offeree or the offeror) for "(whether or not an associate of the offeree or the offeror)";

(i) in Rule 8.3(e)(i) by the substitution of "a person acting in concert with the offeree" for "an associate of the offeree" and of "a person acting in concert with the offeror" for "an associate of the offeror";

(j) in Rule 8.6(a)(ii)(4) by the substitution of "a person acting in concert" for "an associate";

(k) in Rule 8.7(b) by the substitution of "any person acting in concert with any offeror or with the offeree" for "any associate of any offeror or of the offeree" and by the substitution of "the person so acting in concert" for "the associate";

(l) in Rule 8.8 by the substitution of "attaching to persons acting in concert" for "attaching to associates", of "(including persons known to be acting in concert with the client)" for "(including known associates)" and of "principals, of

persons acting in concert with them and of other persons" for "principals, associates and other persons";

(m) in Rule 24.5 by the deletion of "or any associate of it";

(n) in Rule 24.12 by the deletion of the final sentence commencing with the words "If the directors";

(o) in Rule 25.3(a) by the substitution for subparagraph (ii) of the following subparagraph:

"(ii) the same details as in subparagraph (i) above, in respect of relevant securities of the offeree, in relation to each of:

(1) the directors of the offeree;

(2) any other person who is acting in concert with the offeree:

(3) any person who, prior to the despatch of the first response circular, has provided the offeree or any person acting in concert with it with an irrevocable commitment or letter of intent, together with the names of such persons and details of any such commitment or letter, including, in the case of a commitment, the circumstances in which it will cease to be binding; and

(4) any person who has an arrangement to which Rule 8.7 applies with the offeree or with any person who is acting in concert with the offeree;";

(p) in Rule 25.5 by the substitution of "any person who is acting concert with the offeree" for "any person who is an associate of the offeree by virtue of any of paragraphs (a) to (g) of the definition of "associate" " and by the deletion of the final sentence commencing with words "If the offeree board"; and

(q) in Appendix 3:

(i) in Disclosure Form 8.1(a) & (b)(i):

(1) by the substitution in the heading of that form of "**PARTIES ACTING IN CONCERT WITH THEM**" for "**THEIR ASSOCIATES**";

(2) by the substitution in section 4 of "with which acting in concert" for "with which associated" and of "acting in concert status" for "associated status";

(3) by the substitution of "*Rule 2.6*" for "*Rule 2.7*" in Note 3 of the Notes on the form; and

(4) by the deletion from the Notes on the form of Note 10;

(ii) in the Notes on Disclosure Form 8.1(b)(ii) by the substitution of "*Rule 2.6*" for "*Rule 2.7*" in Note 2, of "*Rule 2.6(d)* for "*Rule 2.7(d)*" in Note 6 and of "*Rule 2.2*" for "*Rule 2.3*" in Note 9;

(iii) in Disclosure Form 8.2:

(1) by the substitution in the heading of that form of "**PARTIES ACTING IN CONCERT WITH THEM**" for "**THEIR ASSOCIATES**";

(2) by the substitution in section 2 of "with which acting in concert" for "with which associated" and of "acting in concert status" for "associate status"; and

(3) in the Notes on the form, by the substitution of "*Rule 2.6(d)*" for "Rule 2.7(d)" in Note 5 and by the deletion of Note 6;

(iv) in the Notes on Disclosure Form 8.3, by the substitution of "*Rule 2.6(d)*" for "*Rule 2.7(d*)" in Note 7 and of "Rule 2.2" for "*Rule 2.3*" in Note 10; and

(v) by the substitution for the existing Disclosure Form 38.5 of the two new Disclosure Forms 38.5(a) and 38.5(b), together with Supplemental Form 38.5(b), in the form set out in the Schedule to these Rules.

5. The 2007 Rules are hereby amended as follows:

(a) by the insertion in Rule 4.2 after paragraph (a) of the following new paragraph (b);

"(b) During an offer period, neither the offeror nor any person acting in concert with it may acquire any interest in relevant securities of the offeree (i) through any anonymous order book system, or (ii) through any other means, unless, in either case, it can be established that the seller, or other party to the transaction in question, is not an exempt principal trader connected with the offeror.

In the case of dealings through an inter-dealer broker or other similar intermediary, "seller" includes the person who has transferred the securities to the intermediary a well as the intermediary itself.";

and by the renumbering of existing paragraphs (b) to (e) as paragraphs (c) to (f) respectively and by consequentially so renumbering all other references to any of those existing paragraphs (b) to (e);

(b) by the insertion in Rule 4.2(e) of "or an exempt principal trader" after "an exempt fund manager" and of "or the principal trader" after "the fund manager";

(c) by the substitution for paragraph (c) in Rule 5.1 of the following new paragraph (c):

"(c) Acquisitions of voting securities or of rights over such securities for discretionary clients by fund managers or principal traders connected with an offeror shall, except where they are exempt, be included in the aggregation of acquisitions, unless the Panel consents otherwise. It shall be the duty of the offeror, the financial adviser to the offeror, the fund manager and the principal trader concerned to ensure that such obligation is observed.";

(d) by the substitution for Rule 7.2 (including its heading) of the following new Rule 7.2:

"7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS

(a) (i) A discretionary fund manager or a principal trader which is connected with the offeror shall, subject to paragraph (b), be presumed for the purposes of the Act (until the contrary is established to the satisfaction of the Panel) to be acting in concert with the offeror once the identity of that offeror is publicly known or, if earlier, from the time at which the connected party had reason to believe that the person with whom it is connected may make an offer.

(ii) Similarly, a discretionary fund manager or a principal trader which is connected with the offeree shall during the offer period or, if earlier, from the time at which the connected party had reason to believe that an offer may be made in respect of the offeree and that it was connected with the offeree, subject to paragraph (b), be presumed for the purposes of the Act (until the contrary is established to the satisfaction of the Panel) to be acting in concert with the offeree.

(iii) Fund managers and principal traders shall consult the Panel before dealing in securities of the offeree if an obligation under, or an infringement of, Rule 5, 6, 9 or 11.1(a)(iii) would or might be incurred or caused in consequence of such dealing.

(b) The presumptions in paragraph (a) and in Rule 3.3(b)(v) of Part A shall not apply to an exempt fund manager or an exempt principal trader which is connected with an offeror or offeree if the sole reason for that connection is that the fund manager or principal trader is controlled by, controls or is under the same control as a financial or other professional adviser (including a stockbroker) acting in relation to the offer for the offeror or (as the case may be) the offeree.

(c) Whilst paragraph (a)(i) may not, depending on the circumstances, apply to dealings by discretionary fund managers or principal traders connected with an offeror before its identity is publicly known, if, once that identity is publicly know, it becomes apparent that the securities of the offeree held by the offeror and persons acting in concert with it, including securities held by discretionary fund managers or principal traders to which the presumption in paragraph (a)(i) applies, confer 30% or more of the voting rights in the offeree, the offeror shall consult the Panel immediately.";

(e) by the substitution for paragraph (c) in Rule 8.1 of the following new paragraph (c):

"(c) Dealings in relevant securities by an exempt principal trader connected with an offeror or the offeree shall be disclosed publicly in accordance with Rule 38.5.";

(f) by the substitution for Rule 38.3 of the following new Rule 38.3:

"An exempt principal trader connected with the offeror shall not assent any securities owned by it to the offer or purchase any securities of the offeree in assented form until the offer has become unconditional as to acceptances."; and

(g) by the substitution for Rule 38.5 of the following new Rule 38.5 under the same heading:

"Dealings in relevant securities during the offer period by an exempt principal trader connected with an offeror or the offeree shall be aggregated and disclosed publicly by the principal trader in accordance with Rules 8.4(a) and 8.5(a), provided that where an offeror has announced that an offer or possible offer is, or is likely to be, wholly is cash, this Rule shall not require the disclosure of dealings in relevant securities of the offeror.

Such disclosure shall follow the format of the specimen disclosure form (Form 38.5(a)), as set out in Appendix 3, if the relevant trading desk has recognised intermediary status and is dealing in a client-serving capacity. If the relevant trading desk does not have recognised intermediary status, or if it does have that status but it is not dealing in a client-serving capacity, disclosure shall follow the format of the specimen disclosure form (Form 38.5(b)), as set out in Appendix 3.

In the case of dealing in options or derivatives, full details shall be given so that the nature of the dealings can be fully understood."

6. **SUBSTANTIAL ACQUISITION RULES**

Neither section 14(2) of the Interpretation Act 2005 nor Rule 2.5 (d) (as so renumbered in accordance with Rule 3.2 above) 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.

SCHEDULE TO RULES
PART 1
Disclosure Form 38.5(a)

[The Form in Part 1 of Appendix 2 to the Consultation Paper to be included here]

SCHEDULE TO RULES
PART 2
Disclosure Form 38.5(b)

[The Form in Part 2 of Appendix 2 to the Consultation Paper to be included here]

Executed by the Irish Takeover Panel
this day of

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

Appendix 4

PROPOSED NEW NOTES ON RULES

1. **GENERAL**

Change all references in the Notes to Rules 2.3, 2.4, 2.5, 2.6 and 2.7 of Part A to references to Rules 2.2, 2.3, 2.4, 2.5 or 2.6 respectively.

PART A

2. **NOTES ON RULE 2.1**

2.1 In Note 1(e), substitute "*connected principal traders"* for "*connected market-makers*".

2.2 Delete Note 2, renumber Notes 3 to 18 as Notes 2 to 17 respectively and amend accordingly all cross-references throughout the Rules to those existing Notes 3 to 18.

2.3 In Note 6 (as so renumbered) insert the following new paragraph (b) after paragraph (a);

"(b) The effect of a principal trader or fund manager having exempt status is that the presumption of concertedness in Rule 3.3(b)(v) of Part A will not apply. However, the principal trader or fund manager will still be regarded as connected with the offeror or offeree, as appropriate. Connected exempt principal traders, but not connected exempt fund managers, must comply with Rule 38. Connected exempt principal traders and connected exempt fund managers must comply with the relevant provisions of Rule 8.";

and renumber existing paragraph (b) as paragraph (c) and delete existing paragraph (c).

2.4 In Note 6 (as so renumbered), substitute "*exempt principal trader(s)*" for "*exempt market-maker(s)*" and substitute "*principal trader(s)*" for "*market-maker(s)"* throughout (including the heading but except in the new paragraph (b)).

2.5 In Note 11(e), substitute "*exempt principal trader*" for "*exempt market-maker*".

2.6 In Note 11(f)(iii), substitute "*or any person acting in concert with either of them*" for "*or any of their respective associates*".

PART B

3. **NOTES ON RULES 4.1 AND 4.2**

3.1 In Note 2, substitute "a connected" for "an associated".

3.2 In Note 4, substitute for the heading and the first paragraph the following new heading and first paragraph:

"4. Discretionary fund managers and principal traders

Dealings by discretionary fund managers or principal traders connected with the offeror, unless they are exempt, may be relevant. (See Rule 7.2.)"

3.3 In Note 5, substitute "connected exempt principal traders" for "connected exempt market-makers".

4. **NOTES ON RULE 6**

4.1 Substitute for the Note 4 (including the heading) the following:

"4. Discretionary fund managers and principal traders

Dealings by discretionary fund managers or principal traders connected with the offeror, unless they are exempt, may be relevant. (See Rule 7.2.)"

4.2 Insert the following new Note 6 after Note 5:

"6. Rule 11

Acquisitions of securities of the offeree may also give rise to an obligation under Rule 11. Where an obligation is incurred under Rule 11 by reason of any such acquisition, compliance with that Rule will normally be regarded by the Panel as satisfying an obligation under this Rule in respect of that obligation."

5. **NOTES ON RULE 7**

Substitute the following new Note 2 for existing Note 2 and insert after Note 2 the new Note 3 set out below:

"2. Qualifications

"(a) If a connected fund manager or principal trader is in fact acting in concert with an offeror or the offeree, the usual concert party consequences will follow.

(b) If an offeror or any company in its group has funds managed on a discretionary basis by an exempt fund manager, Rule 7.2 may be relevant. If, for example, any securities of the offeree are owned by the offeror through such exempt fund manager, the exception in Rule 7.2(b) in relation to exempt fund managers may not apply in respect of those securities. The Panel should be consulted in such cases.

(c) Where a fund manager or a principal trader is connected with an offeror by reason of paragraph (d) of the definition of "connected fund manager" or "connected principal trader" (see Rule 2.2 of Part A), the Panel may, in appropriate circumstances, waive the acting in concert presumption in Rule 7.2(a), for example, where the shareholding held in the consortium concerned is not considered by the Panel to be material in the circumstances.

3. Rule 7.2

Rule 7.2 addresses the position of connected fund managers and principal traders who either do not have exempt status or whose exempt status is not relevant because the sole reason for the connection is not that referred to in Rule 7.2(b)."

6. **NOTES ON RULE 8**

6.1 In Note 6, substitute for the note (including the heading) the following:

"6. Recognised intermediaries

The exceptions for recognised intermediaries in Rule 8.3 must not be used to avoid or delay disclosure of dealings. For example, a dealing in relevant securities by such an intermediary, backed by a firm commitment by a person to purchase the relevant securities from the intermediary, will be regarded as a dealing by that person. Such a commitment may be firm even if not legally binding, for example, because of market practice. Such arrangements, therefore, should not be entered into unless appropriate disclosures are to be made. In addition, if such an arrangement is entered into with an offeror or a person acting in concert with the offeror, it may mean that the intermediary is acting in concert with the offeror, in which case normal concert party consequences would follow (such as the application of Rules 4, 5, 6, 7, 9, 11 and 24 and disclosure of dealings by the intermediary under Rule 8.1)."

6.2 Delete Note 13 and renumber Notes 14 and 15 as Notes 13 and 14 respectively.

7. **NOTES ON RULE 9.1**

7.1 Substitute the following note for Note 7:

NOTES ON RULE 9.1- OTHER GENERAL CONSIDERATIONS

"7. The chain principle

A person or group of persons acquiring securities conferring more than 50% of the voting rights in a company (which need not be a relevant company) may thereby acquire or consolidate control, as defined in the Rules, of a second company, which is a relevant company because the first company, either directly or indirectly through intermediate companies, holds a controlling block, i.e. 30% or more, of the voting securities in the second company or holds securities which, when aggregated with those already held by the person or group, secure or consolidate control of the second company. In determining whether to waive the obligation to make an offer under Rule 9 in these circumstances, factors which the Panel will take into account may include whether:

(a) the holding in the second company represents a substantial part of the assets, profits or market value of the first company. Relative values of 50% or more will normally be regarded as substantial; or

(b) securing control of the second company might reasonably be considered to be a significant purpose of acquiring control of the first company.

The Panel should be consulted in all such cases to establish whether, in the circumstances, it is prepared to consent to a waiver of the resulting offer obligation under Rule 9.1."

7.2 In Note 10, substitute for the note (including the heading) the following:

"10. Discretionary fund managers and principal traders

Except in the case of a bid for a Shared Jurisdiction Company, dealings by discretionary fund managers or principal traders connected with the offeror, unless they are exempt, may be relevant. (See Rule 7.2.)"

8. **NOTES ON RULE 11**

Substitute the following notes for all of the existing notes:

"1. *Equality of treatment*

In considering whether *to exercise the discretion given to the Panel in Rule 11.1(a)(ii) to require cash to be made available or in Rule 11.2(a)(ii) to require securities to be made available, the Panel will have particular regard to whether the vendors are directors of, or other persons closely connected with, the offeror or the offeree. In such cases, relatively small purchases could be relevant.*

2. *Discretionary fund managers and principal traders*

Except in the case of Shared Jurisdiction Companies, dealings by discretionary fund managers or principal traders connected with the offeror, unless they are exempt, may be relevant. (See Rule 7.2.)

3. *Derogation from highest price.*

If the offeror considers that the highest price (for the purposes of Rule 11.1 or 11.2) should not apply in a particular case, the offeror should consult the Panel.

Factors which the Panel might take into account when considering an application for an adjusted price include :

(a) the size and timing of the relevant acquisitions;

(b) the attitude of the offeree board;

(c) whether securities have been acquired at high prices from directors or other persons closely connected with the offeror or the offeree; and

(d) the number of securities acquired in the preceding 12 months.

4. *Securities exchange offer*

Where Rule 11.1 is applicable to a securities exchange offer which has been the subject of a Rule 2.5 announcement, compliance with Rule 11.1 must be by means of a cash alternative offer. (See Rule 2.7.)

5. *Offer period*

See the definition of "offer period" in relation to the commencement date of an offer period for the purposes of Rule 11 where:

(a) there are overlapping offer periods relative to different offers; or

(b) an offer has lapsed pursuant to Rule 12(b)(i).

6. *Vendor placings*

The Panel may consider an application for a derogation from the obligation to make a securities exchange offer under Rule 11.2 in respect of vendor placings if an offeror or any person acting in concert with it arranges the immediate placing of the consideration securities for cash.

7. *Acquisitions for a mixture of securities and other consideration*

The Panel should be consulted where (i) offeree securities which represent in aggregate 10% or more in nominal value of the issued securities of any class have been acquired for a mixture of securities and other consideration within 12 months prior to the commencement of the offer period or (ii) any offeree securities have been acquired for such a mixture during the offer period."

9. **NOTES ON RULE 15**

Insert the following notes under the new heading "NOTES ON RULE 15":

"1. Rule 16.2(d)

See the above Rule where members of the offeree management are to receive offeror securities pursuant to an offer or proposal made in accordance with Rule 15.

"2. Availability of offers and proposals for inspection

An offeror will be obliged under Rule 26(b)(xiv) to make an offer or proposal made by it in accordance with Rule 15 available for inspection from the time the offer document is published until the end of the course of the offer. "

10. **NOTES ON RULE 16**

10.1 Insert under the heading "NOTES ON RULE 16" a new subheading "*NOTES ON RULE 16.1*".

10.2 In existing Note 2, insert "*separate*" before "*vote of independent shareholders*".

10.3 Delete existing Note 4 and insert the following new Note 4:

"4. Debt syndication during an offer period

The Panel may consider granting consent under Rule 16.1 to permit a syndicatee which is a shareholder or intending shareholder of the offeree or which is interested in relevant securities of the offeree to participate in a debt syndication undertaken on behalf of an offeror during an offer period, subject to:

(a) each of the syndicatees in the syndicate concerned having established effective information barriers, that comply with the minimum standards set down by the Panel, between the department of the syndicatee that is involved in making the decision in relation to the debt syndication and its department or departments that are responsible for trading, or making investment decisions in relation to, equity investments; and

(b) each syndicatee having provided a written confirmation and undertaking to the mandated lead arranger for the transaction and to the Panel that such syndicatee has established effective information barriers that comply with the minimum standards set down by the Panel and that it will maintain those barriers so as to ensure that confidential information received by it in the course of the transaction is not accessed by or shared with persons or entities within any of its equity departments.

See also Note 5 on Rule 20.1."

10.4 Insert after the Notes on Rule 16.1 the following:

ñ*NOTES ON RULE 16.2"*

1. *Independent shareholder approval*

In considering whether to exercise its discretion under Rule 16.2(b) or (c) to require the arrangements to be approved at a general meeting of the offeree shareholders, the Panel will have particular regard to whether the value of the arrangements is significant and whether the nature of the arrangements is unusual.

2. *Incentivisation of members of management who are not interested in securities of the offeree.*

Where members of management who are not interested in securities of the offeree are to be offered significant or unusual incentivisation arrangements by the offeror, the offeror should consult the Panel in order to determine whether any issues arise under Rule 3 or Rule 21."

11. **NOTES ON RULE 20.1**

11.1 Insert the following new Note 5:

"5. Debt syndication during an offer period
The Panel may consider granting a derogation from Rule 20.1 to permit the provision, on behalf of an offeror, of non-public information to members of a syndicate, subject to:

(a) each of the syndicatees in the syndicate concerned having established effective information barriers, that comply with the minimum standards set down by the Panel, between the department of the syndicatee that is involved in making the decision in relation to the debt syndication and its department or departments that are responsible for trading or making investment decisions in relation to equity investments; and

(b) each syndicatee having provided a written confirmation and undertaking to the mandated lead arranger for the transaction and to the Panel that such syndicatee has established effective information barriers that comply with the minimum standards set down by the Panel and that it will maintain those barriers so as to ensure that confidential information received by it in the course of the transaction is not accessed by or shared with persons or entities within any of its equity departments.

Where a syndicatee has no interest in the relevant securities of the offeree, in order to avoid any possible breach of Rule 20.1 the Panel may require the syndicatee to provide the above confirmation and undertaking or to undertake to the Panel that it will not acquire an interest in relevant securities of the offeree during the offer period without the consent of the Panel.

See also Note 4 on Rule 16.1."

11.2 Substitute the following for Note 2 on Rule 20.1:

"2. ***Information issued by persons acting in concert (for example, stockbrokers)***

Attention is drawn to paragraph (b)(v) of the acting in concert presumptions in Rule 3.3 of Part A, as a result of which, for example, Rule 20.1(b) will be relevant to stockbrokers who, although not directly involved with the offer, are presumed to be acting in concert with the offeror or the offeree because the stockbrokers are in the same group as the financial adviser to an offeror or the offeree."

12. **NOTES ON RULE 24**

12.1 In Note 2 on Rule 24.3, change the heading to "Discretionary fund managers and principal traders" and substitute "*principal traders*" for "*market-makers*".

12.2 Insert after the Note on Rule 24.4 the following:

"*NOTE ON RULE 24.5*

Management incentivisation arrangements

See Rule 16.2."

13. **NOTE 1 ON RULE 36.2**

Substitute for this note (including the heading) the following**:**

"1. Discretionary fund managers and principal traders

Dealings by discretionary fund managers or principal traders connected with the offeror, unless they are exempt, may be relevant. (See Rule 7.2.)"

14. **NOTE ON RULE 38.2**

Insert "(*See also Rule 4.2(b).)"* as a separate paragraph at the end of this note.

15. **NOTES ON RULE 38.5**

Substitute "NOTES" for "NOTE" in the heading and number the existing note as Note 1. Insert after Note 1 the following new Note 2:

"2. Recognised intermediaries dealing in a proprietary capacity

Where an exempt principal trader with recognised intermediary status deals in relevant securities otherwise than in a client-serving capacity, it should aggregate and disclose under Rule 38.5(b) the interests and short positions which it holds in a proprietary capacity with those of the group's exempt principal traders that do not have recognised intermediary status. However, in making such disclosures, it need not aggregate and disclose details of any interests or short positions which it holds in a client-serving capacity."

16. **SECTION 1 (BACKGROUND) OF THE INTRODUCTION TO THE SUBSTANTIAL ACQUISTION RULES**

In the second paragraph, substitute "exclusive of all amending takeover rules subsequently made by the Panel" for "exclusive of the Irish Takeover Panel, Act, 1997, Takeover (Amendment) Rules, 2008 and the Irish Takeover Panel Act, 1997, Takeover (Amendment) (No. 2) Rules, 2008".