# IRISH TAKEOVER PANEL

# PROPOSALS TO AMEND THE TAKEOVER RULES AND THE SUBSTANTIAL ACQUISITION RULES

# RESPONSE STATEMENT

**20 May, 2022**

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## Introduction

On 21 December 2021 the Irish Takeover Panel (the "Panel") released a public Consultation Paper seeking comments on proposed amendments to the Irish Takeover Panel Act 1997, Takeover Rules, 2013 (the "Rules") and the Irish Takeover Panel Act 1997, Substantial Acquisition Rules, 2007 (the "SARs"). The primary purpose of the proposed amendments to the Rules and the SARs was to update them to take account of developments in takeover practice and changes in relevant legislation that have occurred since the Rules and the SARs were published.

The consultation period in relation to the Consultation Paper expired on 28 February 2022. The Panel received submissions from six respondents. The Panel wishes to sincerely thank the respondents for their detailed and considered submissions.

This paper sets out those amendments which the Panel is proposing to adopt following the consultation exercise. A draft copy of the new takeover rules and substantial acquisition rules, and the notes thereon, marked-up for those changes made since the publication of the Consultation Paper, is set out in the attached Appendix. The new takeover rules and substantial acquisition rules will be published in due course.

Unless otherwise stated, all rule and note references are to the draft new rules and notes thereon set out in the attached Appendix.

**Proposed Amendments to the Rules and Related Notes**

*1. Put up or shut up ("PUSU")*

The most significant matter raised by the respondents was in relation to the Panel's proposed adoption of a revised PUSU regime. The majority of the respondents were not in favour of the proposed new PUSU regime or proposed modifications to its proposed operation. Respondents raised a number of concerns with the proposed new PUSU regime which can be summarised as follows:

- the current PUSU regime has worked well;

- potential offerors could be deterred from making an approach;

- the proposed new PUSU regime would move the balance of power too far in favour of the offeree; and

- the mandatory 12 month lock-out period would, under the new PUSU regime, be overly restrictive.

The above concerns are, as acknowledged by one respondent, not dissimilar to those raised in the UK when the UK Panel was proposing to introduce a similar PUSU regime. In the view of the Panel, the concerns as to negative consequences expressed prior to the adoption of the UK's PUSU regime have not proven to be realized in practice.

Another reason put forward was that the Irish market is quite different to the UK market and in this regard it was contended that there are less hostile offers here than in the UK. While the Panel acknowledges that there are differences between the respective markets none the less it is not necessarily the case that the Irish market is less open to hostile bids.

A proposal made by three of the respondents was that if the Panel ultimately decided to proceed to implement the new PUSU regime, consideration should be given to:

- reducing the current lock-out period under Rule 2.8 from 12 months to 6 months: and

- increasing the 28 day period in which a potential offeror has to put up or shut up, once identified, to a period more in line with the timeframe within which the Panel currently sets PUSU deadlines.

Having carefully considered the matter the Panel has decided to adopt the new PUSU regime. However, having regard to the respondents' comments the Panel has decided to make the following amendments:

- to amend Rule 2.8(c)(i) to reduce the period in which the restrictions under the rule apply from 12 months to 6 months. The Panel notes

that this amendment would bring the rule into line with the comparable rule in the UK Takeover Code; and

- to amend the deadline under Rule 2.6(a) within which a potential offeror has to put up or shut up from 5.00pm on the 28th day to 5.00pm on the 42nd day following the date of the announcement in which it is first identified.

The Panel is satisfied that the above amendments will balance the concern that an offeror would have insufficient time in which to make an offer, once identified, thus depriving offeree shareholders of the opportunity of considering the merits of an offer with the concern that an offeree may be under siege for an extended period.

The amendments referred to above together with certain consequential amendments in the notes to the new takeover rules and substantial acquisition rules are set out in the Appendix.

The balance of this paper summarises (in the order that they will appear in the new rules) the more material of those other amendments that the Panel is proposing to adopt following the consultation exercise.

*2. Note 4(c) on Rule 2.8 (significant asset purchases)*

Note 4 on Rule 2.8 sets out, inter alia, the factors that the Panel will normally have regard to when assessing whether asset purchases are significant for the purpose of Rule 2.8(c)(i)(7). Paragraph (c) provides guidance on what relative values will normally be regarded as significant. In response to a request to clarify paragraph (c) it is proposed to adopt the following amendment:

> *"(c) ~~Relative values of more than 75% will normally be regarded as being significant.~~ If the relative values of any of the three factors set out above in part (a) are more than 75%, the Panel will normally consider this to indicate that the assets are significant."*

*3. Note 1 on Rule 2.9 (irrevocable commitments and letters of intent)*

Rule 2.5(b) provides that an announcement of the terms on which an offeror may make an offer are generally binding on the offeror. Rule 2.9 requires that parties to an offer announce full details of any irrevocable commitment and letters of intent that they procure during an offer period. In response to a request to clarify note 1 on Rule 2.9 it is proposed to adopt the following amendment:

> *"1. Rule 2.5(b)*
>
> *In the case of an irrevocable commitment or a letter of intent procured prior to the announcement of a firm intention to make an offer, the price (and any other material terms) of the possible offer ~~included in the announcement in respect of which the commitment or letter has been procured~~ announced*

*pursuant to Rule 2.9 will constitute a Rule 2.5(a) statement and will be binding on the possible offeror in accordance with Rule 2.5(b)."*

*4. Rule 4.1 (prohibited dealings by persons other than the offeror)*

Because the definition of *"dealing"* is being amended to include the purchasing and redemption by offerees of their own securities, it is proposed to amend Rule 4.1(a) (which prohibits certain dealings in relevant securities of the offeree) to clarify that that rule will not prohibit an offeree dealing in its own relevant securities. It is also proposed to insert a new note 7 on Rules 4.1 and 4.2 to, in effect, cross-refer to the restrictions under Rule 21.1 on offerees redeeming or purchasing their own securities. The proposed changes are as follows:

*"4.1 PROHIBITED DEALINGS BY PERSONS OTHER THAN THE OFFEROR*

*(a) No person, other than the offeror or the offeree, who is privy to confidential price-sensitive information concerning an offer or contemplated offer, shall deal in relevant securities of the offeree during the period (in Rule 4.1 referred to as the "relevant period") from the time at which such person first has reason to suppose that an offer, or an approach with a view to an offer being made, is contemplated to the time of (i) the announcement of the offer or approach or (ii) the termination of the discussions, whichever is the earlier.*

*7. Rule 21.1*

*Rule 21.1 restricts an offeree from redeeming or purchasing its own securities during the course of an offer or at any earlier time at which the offeree board has reason to believe that the making of an offer in respect of the offeree is or may be imminent."*

*5. Rule 4.2(c) (restriction on dealings by the offeror and concert parties)*

Rule 4.2(c) provides that neither an offeror nor any person acting in concert with it may deal in relevant securities of the offeree before the announcement of an offer if the offeree has supplied confidential information to the offeror or its advisors. One respondent argued that in light of the extensive market abuse rules that now apply to listed companies, it is unnecessary for the rule to have such a broad scope. It is proposed therefore to amend the rule so as to confine its application to confidential price-sensitive information. The amendment is set out below:

*"(c) Subject to paragraph (f), neither an offeror nor any person acting in concert with it may deal in relevant securities of the offeree before an announcement of an offer if the offeree has supplied confidential price-sensitive information to the offeror or its advisers."*

*6. Note 14(d) on Rule 8 (opening position disclosures)*

In response to a suggestion from a respondent it is proposed to amend note 14(d) to Rule 8 on the terms set out below to clarify that where a further offeror is identified, a

person, other than an offeror or the offeree, interested in 1% or more of any class of relevant securities of the offeree or an already publicly identified offeror will not be required to make a second opening position disclosure provided that the positions disclosed have not changed.

> "14. Opening position disclosures
>
> (a)….(c)
>
> (d) Except where the disclosure is an opening position disclosure by an offeror or the offeree, ~~no disclosure is required in respect of positions in the relevant securities of the offeree and any offeror~~ <u>if, following an offer period commencing, a further offeror is publicly identified, persons who are interested in 1% or more of any class of relevant securities of the offeree or an already publicly identified offeror will not be required to make a further opening position disclosure</u> if full details of such positions have previously been publicly disclosed under Rule 8 and such positions have not changed."

7. Rule 10 (acceptance condition)

In anticipation of the imminent introduction in Ireland of compulsory dematerialisation of certain Irish securities, the Panel proposes to make changes to Rule 10 and related notes. It is anticipated that, under the proposed dematerialisation model, shareholders holding shares outside of book-entry transfer facilities will remain on the issuer's share register but share certificates will cease to be evidence of title, and instead legal title will be evidenced by a registrar's statement or receipt or by investor code or shareholder reference number. It is therefore proposed to adopt the following amendments to Rule 10.3(b)(i):

> *"(b) For the purposes of paragraph (a), the requirements for an acceptance form are that it is completed to a suitable standard (as specified in paragraph (d)) and is:*
>
> > *(i) accompanied by share certificates in respect of the relevant shares, where the shares are held in certificated form, or such other documents<u>, identification numbers or codes</u> (if any) as are specified in the offer document in order to establish the right of the acceptor <u>as or</u> to become the registered holder of the relevant shares; and, if an acceptance is accompanied by share certificates or such other documents<u>, identification numbers or codes</u> in respect of some but not all of the relevant shares, then, subject to the other requirements of this subparagraph (i) being satisfied in respect of the shares which are covered by share certificates or such other documents, <u>identification numbers or codes,</u> the acceptance may be treated as satisfying the requirements of this subparagraph (i) insofar as it relates to the shares so covered; or"*

Similar amendments are being made to Rule 24.14 (cash underwritten alternative offers) while related amendments are also being made to the note to Rule 10.3 and to note 3 to Rule 17.1, all of which are set out in the Appendix.

*8. Note on Rule 10.4 (acceptance condition/purchases and other acquisitions)*

Rule 10.4 sets out the basis on which purchases and acquisitions of offeree shares (other than pursuant to the offer) by the offeror may be counted towards satisfying the acceptance condition. The note seeks to clarify the effect of the rule by stating that "*Shares purchased and held in a participant account in Euroclear Bank, DTC or other settlement system may not be counted towards satisfying the acceptance condition and, to be so counted, should be registered in the offeree's register of members."*

One respondent argued that requiring an offeror to take any such shares out of a book entry transfer facility in order for them to be counted towards satisfying an acceptance condition imposes an unnecessary administrative burden on the offeror and suggested that there are mechanisms within book entry transfer facilities by which an offeror can demonstrate clear ownership of the relevant shares. Having consulted further on the matter the Panel is not satisfied that such mechanisms are readily available. Further work would need to be done in this area in order for the Panel to be satisfied that such mechanisms are available. Having regard to the importance of ensuring certainty in relation to the satisfaction of the acceptance condition, the Panel has decided not to amend the rule at this time.

A minor amendment is being made to the note however to highlight that any purchases and acquisitions of offeree shares by the offeror which do not meet the requirements of the rule may be counted towards satisfying the acceptance condition by the offeror accepting them to the offer.

> *"NOTE ON RULE 10.4*
>
> *Purchases and other acquisitions*
>
> *The effect of Rule 10.4 is that purchases or other acquisitions of shares may be counted towards satisfying an acceptance condition of the offer only if the shares are registered in the offeree's register of members or the subject of an executed transfer meeting the requirements of Rule 10.4. Shares purchased and held in a participant account in Euroclear Bank, DTC or other settlement system may not be counted towards satisfying the acceptance condition and, to be so counted, should be registered in the offeree's register of members or accepted to the offer."*

*9. Rule 17.1(e) and notes on 19.3 (statements of support)*

Rule 17.1(e) and the notes on 19.3 each deal with statements an offeror may seek to make about the level of support for its offer. Given the similarity between the issues dealt with in Rule 17.1(e) and in the notes on 19.3, a cross-reference between the two is being inserted into the respective notes.

*10. Note 4 on Rule 19.5 (encouraging shareholder participation)*

The proposed new note 4 on Rule 19.5 provides guidance on telephone campaigns and specifically the type of contact with shareholders that is considered to fall outside regulation under Rule 19.5. In response to the suggestions of one respondent, the Panel proposes to amend the note in order to clarify further what falls outside the scope of the rule. Consequently, the Panel proposes to make the following amendments to the note:

> *"4. Encouraging shareholder participation*
>
> *The Panel will normally accept that a telephonic exercise with shareholders' "back office" administrative personnel to encourage participation in an offer or shareholder meeting confined to factual and non-controversial information about the offer or meeting (including, inter alia, reminders as to closing times or proxy deadlines and the mechanics of voting) and in respect of which callers must decline to answer questions that go beyond such factual and non-controversial information (e.g. questions in relation to the merits of the offer) ~~and its merits~~ is not a telephone campaign for the purpose of Rule 19.5 and may be conducted by staff of a type other than that mentioned in Rule 19.5."*

*11. Rule 20.3(e) (equality of information to offerors)*

Rule 20.3(a) requires an offeree to provide promptly any information specifically requested by an offeror if, and to the extent that, the same or substantially the same information has previously been made available by the offeree to another offeror. The Panel had suggested that under a new Rule 20.3(e) an offeree might also be required to provide promptly any information specifically requested by a bona fide potential offeror if, and to the extent that, the same or substantially the same information had previously been made available by the offeree to a purchaser or potential purchaser of all or substantially all of its assets.

One respondent queried why equality of information was being extended to *"bona fide potential offerors"* under Rule 20.3(e) while under Rule 20.3(a) such information is required to be provided to an *"offeror".* They contended that it was unclear why a lower standard of potential offeror should have rights under Rule 20.3(e). It is not the Panel's intention to introduce any such lower standard and therefore the reference to a "*bona fide potential offeror*" is being deleted from Rule 20.3(e). A similar reference in note 1 on Rules 20.1 and 20.2 (furnishing of information to offerors) is also being deleted.

The respondent also suggested that the drafting of Rule 20.3(e) was unclear as the reference to *"If the Panel so directs"* might imply that the rule is applicable regardless of whether an asset sale is being pursued. This is not the intention and consequently the reference to a Panel direction is being deleted.

The proposed amendments are set out below.

"(e) *If ~~the Panel so directs or if~~ the offeree makes a public announcement that it has commenced discussions with one or more persons in relation to the sale of all or substantially all of its assets (excluding cash and cash equivalents) during an offer period or following the date on which the board of the offeree has reason to believe that a bona fide offer might be imminent, information given by the offeree to the potential asset purchaser(s) must, on request, be given to an offeror. ~~or bona fide potential offeror~~.*

*1. Furnishing of information to offerors*

*Rules 20.1 and 20.2 do not prevent the furnishing of information in confidence by an offeree to ~~a bona fide potential~~ an offeror or vice versa."*

*12. Rule 20.5 (videos)*

Three respondents raised concerns in relation to the operation of this new rule which seeks to regulate the use of videos during the course of an offer. The main concern was that the rule would prevent offerors and offerees from including a shareholder Q&A session in their financial results webcasts, which they maintain is common practice. One respondent also expressed the view that videos prepared for a company's internal use should not be subject to Rule 20.5 in the same way as videos published for public consumption. It was submitted that it would be appropriate to include a carve-out (similar to the last sentence of the existing Rule 20.1(b)(iii)) for videos published for, and accessible only by, employees in their capacity as such (rather than in their capacity as shareholders). In order to address these issues the Panel proposes to redraft the rule so that it:

- prevents material new information and significant new opinions relating to an offer being disclosed via videos;

- permits an offeror and an offeree to publish a video relating to its financial performance subject to certain safeguards; and

- provides an exception to the publishing requirements set out in Rule 20.5(b) for videos published for, and accessible only by, employees in their capacity as such.

A revised draft of the rule is set out below.

"*20.5 VIDEOS*

*(a) No material new information relating to an offer may be first disclosed nor any significant new opinion relating to an offer first expressed by video.*

*(b) Subject to paragraph (c), a video published during the course of an offer by or on behalf of an offeror or the offeree (other than a video published for, and accessible only by, employees in their capacity as such) relating to the offer must comprise only a director or senior*

*executive reading from a script or participating in a scripted interview. Any such video may be published only with the prior consent of the Panel.*

*(c) Subject to paragraph (a), an offeror or the offeree may publish during the course of an offer a video relating to its financial performance. An appropriate representative of the financial adviser or corporate broker to the offeror or (as the case may be) the offeree shall confirm in writing to the Panel before publication of any such video that no material new information is disclosed and no significant new opinion is expressed in the video.*

*(d) A video to which paragraph (b) or paragraph (c) applies must be published on a website of the offeror or (as the case may be) the offeree in accordance with Rule 26."*

*13. Rule 20.6 (social media)*

Rule 20.6 seeks to restrict the use of social media during the course of an offer. In response to comments from a respondent it is proposed to amend the rule in two respects. Firstly, given the character limit on social media platforms subparagraph (d) of the rule is being amended so that a notification of a link to a web page on which an announcement, document or video has been published need not include a summary of the provisions of Rule 8. Secondly, a new subparagraph (e) is being added to permit advertisements which comply with the requirements of Rule 19.4 to be published via social media. The proposed amendments are as follows:

*"(d) a notification of a link to the webpage on which such an announcement, document or video has been published, which notification must comply with the requirements of Rule 30.6. (other than Rule 30.6(b)); and*

*(e) advertisements that comply with the provisions of Rule 19.4."*

*14. Rule 21.1 (frustrating action / share buyback programmes)*

Some respondents raised concerns in relation to the treatment of share buyback programmes in the context of the Rule 21.1 prohibition on frustrating action. Specifically, these respondents queried the requirement to obtain Panel consent for the ongoing operation of existing buyback programmes and queried the treatment of buyback programmes that are publicly announced but not yet implemented.
The existing Rule 21.1(a)(iv) provides an exception to the restrictions under Rule 21.1 where the proposed action is in pursuance of a contract entered into prior to the relevant time period under Rule 21.1(a) however the exception is subject to Panel consent. The existing note 9 on Rule 21.1 states, in effect, that such consent will be granted where the Panel is satisfied that the relevant contract places the board of the offeree under a contractual obligation to take the specific action in question.

Having considered the respondent's concerns the Panel proposes amend Rule 21.1 and to add a new note to the rule. It is proposed to amend Rule 21.1 to provide an

express exception, to be set out in Rule 21.1(c), to the requirement for Panel consent in respect of share buyback programmes where the purchases/redemptions are in pursuance of a contract entered into before the relevant time period under Rule 21.1(a). The new Rule 21.1(c) is set out below.

> *"An offeree may, for the purpose of Rule 21.1(a)(iv), redeem or purchase any of its own securities in pursuance of a contract entered into prior to the announcement of the offer or (as the case may be) to such earlier time as is referred to above without obtaining the prior consent of the Panel."*

A new note 12 to Rule 21.1 will provide guidance in relation to previously announced buyback programmes.

> *"12. Established share buyback programmes*
>
> *The Panel may consent to an offeree continuing a previously announced share buyback programme which has not yet been partly or fully implemented provided the programme continues in accordance with the previously announced timeline and parameters. The Panel may also consent to an offeree renewing a share buyback programme the timing and parameters of which are in accordance with its normal practice under an established share buyback programme. The Panel should be consulted in any such case."*

*15. Note 1 on Rule 21.1 (frustrating action)*

It is proposed to amend the second paragraph of note 1 on Rule 21.1 in two respects. Firstly, to clarify that while the Panel may consult the offeror when considering whether a proposed action by the offeree constitutes frustrating action, it is not obliged to do so and furthermore that it recognises that there are circumstances in which it would be inappropriate for it to do so. Secondly, to highlight that there may be circumstances in which an action that the offeree proposes to take may constitute frustrating action notwithstanding that the offeror consents to the action. The proposed amendments are as follows:

> *"1. Frustrating action*
>
> *In considering whether an action <u>that the offeree proposes to take</u> would constitute frustrating action, the Panel may take, <u>but is not obliged to take,</u> into consideration whether the offeror is consenting to the action. <u>The Panel recognises that there are circumstances in which it would be inappropriate for it or the offeree to consult with the offeror in relation to an action that the offeree proposes to take. There may also be circumstances in which an action that the offeree proposes to take may constitute frustrating action notwithstanding that the offeror consents to the action.</u>*

*16. Note 5 on Rule 21.1 (frustrating action)*

The note refers to the circumstances in which the Panel may consent to an offeree granting options under established share option schemes. One respondent referred

to the variety of forms of equity-based incentive arrangements that companies can put in place for employees and suggested that the note be amended to reflect this. It is therefore proposed to amend the note on the following terms:

> *"5. Established ~~share option schemes~~ equity-based incentive arrangements*
>
> *The Panel may grant its consent where the offeree proposes to continue to operate equity-based incentive arrangements for employees (e.g. options, RSUs, RSAs, phantom share award plans etc.) ~~grant options over shares~~, the timing and level of which are in accordance with its normal practice under an established ~~share option~~ equity-based incentive scheme. However, the Panel should be consulted in any such case. Likewise, the Panel will normally grant its consent to the issue of new shares or to the transfer of shares from treasury to satisfy the exercise of ~~options~~ equity based incentive arrangements under an established ~~share option~~ scheme."*

*17. Note 11 on Rule 21.1 (asset purchases and sales)*

In response to a comment from a respondent a minor clarificatory amendment is being made to the second paragraph of this note.

> *"Panel consent will be required in advance under Rule 21.1(a)(5) where the offeree proposes to enter into a contract with the purchaser/vendor and that contract contains an inducement fee or fees that become or may become payable by the offeree in the event that approval of the offeree's shareholders is sought and not obtained….."*

*18. Rule 24.3(a) and (b) (financial and other information)*

A number of respondents raised issues in relation to the requirement for cash offerors to disclose:

- a summary of the principal contents of material contracts;
- details of any current credit ratings and outlooks; and
- details of any debt facilities entered into in order to finance the offer.

Having considered the respondents comments the Panel decided that the requirements under Rules 24.3(a)(vi) and 24.3(b)(xvi) to disclose the principal contents of material contracts and any current credit ratings and outlooks respectively should be confined to securities exchange offerors. In doing so, the Panel is mindful of the requirement under General Principle 5 as regards the necessity to ensure that any cash consideration must be fulfilled and the corresponding significant responsibilities accepted by financial advisers to offerors in making cash confirmation statements under Rule 2.7(d) and Rule 24.8. As regards the requirement under Rule 24.3(d) to disclose details of any debt facilities entered into in order to finance the offer, the Panel decided that such information should be made available to offeree shareholders and consequently decided not to make any

further amendments to this rule. The proposed amendments to Rule 24.3(a)(vi) and (b)(xvi) are as follows:

(a)(vi) *"in the case of a securities exchange offer, a summary of the principal contents of each material contract (not being a contract entered into in the ordinary course of business) entered into by the offeror or any of its subsidiaries during the period beginning two years before the commencement of the offer period, including particulars of dates, parties, terms and conditions and any consideration passing to or from the offeror or any of its subsidiaries;"*

(b)(xvi) *"summary details of any current ratings and outlooks publicly accorded to ~~the offeror and~~ the offeree and, in the case of a securities exchange offer, the offeror by credit rating agencies, any changes made to previous ratings or outlooks during the offer period, and a summary of the reasons given, if any, for any such changes;"*

*19. Rule 26.3(v) (documents to be published on a website)*

In response to a comment from a respondent an amendment is being proposed to Rule 26.3(v) to provide that the offeror only (and not the offeree) is required to publish financing documents on its website as it will be the party who will control access to such documents.

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

*The following documents shall be published on a website from the time the offer document or first response circular, as appropriate, is published (or, if later, the date of the relevant document): ...*

*(v) in the case of the offeror, any documents relating to the financing of the offer referred to in Rule 24.3(d);"*

*20. Rule 27.1 (material changes)*

Rules 27.1(a)(i) and (c) introduce requirements on the offeror and the offeree, in the case of the former, to promptly announce any changes in information disclosed in any document or announcement published by it in connection with the offer which are material in the context of that document or announcement and, in the case of the latter, to ensure that any documents published subsequently to the offer document or offeree response circular contain details of any changes in information disclosed in those earlier documents which are material in the context of that document. A respondent suggested that a note be added to the notes on Rule 27 to highlight that the Panel may consent to a derogation from these requirements where it is satisfied that the changes in information are immaterial in the context of the offer. The new note is set out below:

*"2. Rule 27.1(a)(i) and (c)*

*The Panel may consent to a derogation from the requirement to:*

*(a) make an announcement under Rule 27.1(a)(i); or*

*(b) disclose details of changes in information previously disclosed under Rule 27.1(c),*

*where the Panel is satisfied that the changes in information disclosed in any document or announcement are immaterial in the context of the offer."*

*21. Rule 27.2 (continuing validity of profit forecasts, quantified financial benefits statements and asset valuations)*

The rule requires that where any document or announcement published by the offeror or the offeree includes a profit forecast, a quantified financial benefits statement or an asset valuation any document subsequently published by that party in connection with the offer must, unless superseded by information included in the new document, include certain confirmations about continuing validity. A respondent suggested that the rule should be amended to clarify that *"any document"* refers to the key documents in the offer process such as the firm intention announcement, offer document, response circular etc.. It is therefore proposed to amend the rule as follows:

*"27.2 CONTINUING VALIDITY OF PROFIT FORECASTS, QUANTIFIED FINANCIAL BENEFITS STATEMENTS AND ASSET VALUATIONS*

*If any document or announcement published by the offeror or the offeree during the offer period included a profit forecast, a quantified financial benefits statement or an asset valuation, any ~~document~~ announcement of a firm intention to make an offer pursuant to Rule 2.7, offer document, revised offer document, first response circular, response circular in relation to a revised offer or any document sent pursuant to Rule 27.1(b) subsequently published by that party in connection with the offer must, unless superseded by information included in the new document, include a statement by the directors of that party confirming….."*

*22. Note 5 on Rule 28.1 (fairness opinions)*

The proposed note 5 to Rule 28.1 provides that the Panel may consent to waiving the generally applicable requirement for reports from reporting accountants and financial advisers in relation to prospective financial information where it is established that the information in question is included in a document in order to comply with the requirements of applicable law or regulation. In response to a submission noting that such information may be included on the request of an applicable regulator such as the SEC, rather than by application of a specific legal provision or regulatory requirement, it is proposed to amend the second paragraph of the note as follows:

*"5. Fairness opinions*

*Where it is established that the prospective financial information is included in order to comply with the requirements of applicable law ~~and,~~ or regulation or of any relevant regulator and following consideration of the circumstances of the publication, the Panel may consent to waiving the requirement for reports from reporting accountants and financial advisers required by Rule 28.1(a) and/or for the directors' confirmations required by Rule 28.1(c)(i), Rule 28.2(a) and Rule 28.2(c)(i), in connection with the prospective financial information."*

*23. Rule 30.1(c) (announcements to be published via a RIS)*

The current draft of this rule requires that if an announcement is published at a time when the relevant RIS is not open for business the announcement must be distributed to not less than two newswire services operating in Ireland. A respondent suggested that given the variety of jurisdictions in which relevant companies can be registered and headquartered the relevant newswire services should, rather than being required to operate in Ireland, be those operating in the place in which the primary market on which the relevant securities concerned are quoted. The proposed amendments are as follows:

*"(c) If the announcement is published at a time when the relevant Regulatory information Service is not open for business, it shall be distributed to not less than two newswire services operating in ~~Ireland~~ the place in which the primary market (as defined in Rule 2.3(d) of Part A) on which the relevant securities of the relevant company concerned are quoted, and submitted, as required by the Rules, to a Regulatory Information Service for release as soon as that service next opens."*

*24. Miscellaneous*

A respondent suggested that as not all financial instruments within scope of the Rules will be listed on regulated markets, the definition of *"Regulatory Information Service"* should be amended to refer to *"Recognised market"* (an existing defined term in the Rules) in order to include regulatory information services approved for use by NYSE, NASDAQ and LSE as well as those approved by regulated markets and any other recognised market from time to time. The amended definition is as follows:

*"Regulatory Information Service" or "RIS" means any regulatory information service provided, or approved for use, by the ~~regulated~~ recognised market on which the relevant financial instruments are admitted to trading or any such other regulatory information service as may be specified for the time being, either in substitution or by way of addition, by the Panel for the purposes of these Rules;"*

# Appendix

## Marked-up copy of draft new takeover rules, substantial acquisition rules and notes thereon