TAKEOVER RULES

INTRODUCTION

~~1.~~1. NATURE AND PURPOSE OF THE TAKEOVER RULES

The Irish Takeover Panel Act, 1997, Takeover Rules, ~~2013~~ [•] (the "Rules") comprise rules made by the Irish Takeover Panel (the "Panel") under the powers granted to the Panel by the Irish Takeover Panel Act, 1997, as amended (the "Act") and by the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 as amended (the "Regulations"). This Introduction provides some information on the Panel and its operations, but neither it nor the Notes on the Rules nor the footnotes to certain Rules constitute a part of the Rules as such nor do they constitute a legal interpretation of the Rules.

The Panel is designated under the Regulations as the competent authority for the purposes of Article 4(1) of the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (the "Directive"). The Regulations, which were made by the then Minister for Enterprise, Trade and Employment, came into operation on 20 May 2006. Regulation 4(1) of the Regulations applies the Act, subject to the Regulations, to each company a takeover bid or bid (as defined in the Regulations) for which the Panel has jurisdiction to supervise under the Regulations. Under Regulation 4(3), references to a "relevant company" in the Act include references to each company a bid for which the Panel has jurisdiction to supervise.

Rule 4 of Part A of the Rules disapplies certain rules in the case of companies which fall within the definition of "relevant company" in section 2 of the Act solely as a result of the Regulations ("Shared Jurisdiction Companies"). The disapplication of such rules is indicated by way of footnotes to the relevant rules. Furthermore, certain other rules will be applied or disapplied depending on whether the Shared Jurisdiction Company is incorporated in the State or whether its securities are listed in the State. In the former case, the Panel will be responsible for applying only those rules relating to company law matters and those relating to the information to be provided to the employees of the offeree. In the latter case, the Panel will be responsible for applying only those rules relating to the bid procedure and those relating to the consideration offered under the takeover bid (see paragraph 4(a) below).

The Rules have been made principally to ensure that takeovers (including takeover bids as defined in the Regulations) and other relevant transactions comply with the principles (the "General Principles") set out in the Schedule to the Act. The General Principles are reproduced at the end of this Introduction. The Rules also provide an orderly framework within which takeovers are conducted. They are not concerned with the financial or commercial advantages or disadvantages of a takeover, which are matters for the companies concerned and their shareholders. Nor are the Rules concerned with issues such as competition and mergers policies, which are regulated under different legislation.

The Members of the Panel are representative of those professionally involved in the securities markets and in the field of takeovers. The various bodies represented co-operated to help to promote the Act because of the importance to Irish financial markets of maintaining high standards in relation to takeovers, following upon the establishment of the Irish Stock Exchange as a fully independent market in December 1995, and the consequent agreement that the functions of the UK Panel on Takeovers and Mergers in relation to Irish companies would be replaced by an independent Irish regulator.

~~2.~~2. RESPONSIBLE PARTIES UNDER THE RULES

The responsibilities imposed by the Rules are applicable most directly to those who are defined as parties to a takeover or other relevant transaction in the Act. These include the offeror and offeree companies, the directors of each and their advisers, together with persons acting in concert with the offeror, the shareholders of the offeree and persons who give confirmation that adequate resources are available to implement an offer or proposed offer. Further, there is provision for the Panel to specify, either generally in the Rules or in the circumstances of a particular case, additional parties as coming within the definition. Employees, agents and contractors who are engaged by the defined parties must also comply with the Rules. Responsibility under the Rules applies to all advisers involved in the transaction concerned~~, irrespective of whether they are affiliated to any of the bodies which are members of or appoint Directors to the Panel~~. Any persons (including shareholders of the offeree) who issue statements, advertisements or circulars to shareholders in connection with takeovers, or otherwise intervene in the process, must comply with the General Principles and the Rules and observe the highest standards of care. There is a particular responsibility on financial advisers to offerors and offerees to ensure that the full extent of their responsibilities under the Rules is understood and fully observed by their clients and by all others advising, providing services to or otherwise connected with the client for the purposes of the transaction.

~~3.~~3. ENFORCEMENT OF THE RULES

The Panel has statutory power under the Act to make rulings and to give directions to ensure that the General Principles and the Rules are complied with. The Panel has power under the Act and the Regulations to grant derogations from or waive any Rules in appropriate circumstances. If the Panel considers that a ruling or direction has not been complied with, or is unlikely to be complied with, the Panel may apply under the Act to the High Court for an appropriate order for enforcement.

The Act also gives the Panel power to enquire into the conduct of any person where it has reasonable grounds for believing that a contravention of the General Principles or the Rules has occurred or may occur. Following such an enquiry, the Panel may advise, admonish or censure such person in relation to his or her conduct, and may do so either privately or publicly.

Any interested person may lay a complaint with the Panel concerning an alleged breach or potential breach of the General Principles or the Rules. It is important that any complaint be made at the earliest practicable time.

Where the Panel rules that serious breaches of the Rules have occurred, it may also bring the conduct of parties to the notice of relevant professional or regulatory bodies or other appropriate authorities.

~~4.~~4. COMPANIES AND TRANSACTIONS TO WHICH THE ACT, THE REGULATIONS AND THE RULES APPLY

(a) Takeover Bids for Directive Companies

The Regulations (and the Act, subject to the Regulations) and the Rules apply to takeover bids for companies a bid in respect of which the Panel has jurisdiction to supervise by virtue of Regulation 6 of the Regulations ("Directive Companies")~~, i.e. a company which:~~

Directive Companies

A Directive Company is a company which:

~~(i)~~(i) has its registered office in the State and whose transferable voting securities are admitted to trading on a regulated market in the State;

~~(ii)~~(ii) has its registered office in the State and whose transferable voting securities are admitted to trading on a regulated market in one or more Member States (i.e. a Member State of the European Communities or an European Economic Area state) other than in the State;

~~(iii)~~(iii) has its registered office in another Member State and whose transferable voting securities are admitted to trading solely on a regulated market in the State; or

~~(iv)~~(iv) has its registered office in another Member State and whose transferable voting securities are admitted to trading on regulated markets in more than one Member State, excluding that other Member State but including the State, if ;

~~(1)~~(1) the transferable voting securities were first admitted to trading on a regulated market in the State; or

~~(2)~~(2) (subject to (3)) the transferable voting securities have been simultaneously admitted to trading on regulated markets in more than one Member State, including the State, and the company determines in accordance with Article 4(2)(c) of the Directive that the Panel shall be the competent authority to supervise the takeover bid; or

~~(3)~~(3) where the transferable voting securities were simultaneously admitted to trading on regulated markets in more than one Member State, including the State, by 20 May 2006 and the supervisory authorities of those Member States or, failing them, the company have determined in accordance with Article 4(2)(c) of the Directive that the Panel shall be the competent authority to supervise the bid.

The Panel will require a company referred to in (iv)(2) and (3) above to publish the selection of the Panel as the competent authority to supervise a takeover bid for that company in at least one daily newspaper circulating in the State.

The Rules will apply in full to takeover bids in cases falling under paragraph (i) above. In cases falling under paragraphs (ii), (iii) and (iv) above the Panel shall determine, subject to Rule 4 of Part A of the Rules, the extent to which the Rules apply on the basis set out in Regulation 6(3) and (4). In summary, this means that:

~~(i)~~(i) in cases falling under paragraph (ii) above, the Rules and other relevant Irish legislation will apply in respect of matters relating to the information to be provided to the employees of the company and matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a takeover bid, as well as the conditions under which the board of the company may undertake any action which might result in frustration of the takeover bid; and

~~(ii)~~(ii) in cases falling under paragraph (iii) or (iv) above, the Rules will apply in respect of matters relating to the consideration offered in the case of a takeover bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the takeover bid.

A regulated market is a market within the meaning of Article ~~4(14~~4(1)(21) of Directive ~~2004/39/EC of 21 April 2004~~ MIFID 2014/65/EU of 15 May 2014 on markets in financial instruments.

Takeover Bids

The Regulations and the Rules are concerned with regulating takeover bids for transferable voting securities of Directive Companies. A "takeover bid" or "bid" is defined in the Regulations as:

"a public offer (other than by the offeree itself) made to the holders of the securities of a company governed by the law of a Member State to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree in accordance with the law of a Member State".

Control in relation to a takeover bid is determined by reference to the definition of "control" in the Act which in relation to a Directive Company (other than those Shared Jurisdiction Companies which have their registered office in another Member State in which case "control" would be determined by the rules of that Member State) is the holding, whether directly or indirectly, of securities of the company that confer, in aggregate, not less than 30% (or such other percentage as may be prescribed) of the voting rights in that company.

It is important to note that a mandatory offer is required under Rule 9 where a holding of 30% or more of the voting rights in a Directive Company is acquired or a holding of less than 30% of such voting rights increases to 30% or more, or where, except in the case of a Shared Jurisdiction Company, a holding of 30% or more of the voting rights increases by more than 0.05% within any period of 12 months.

~~The~~ For Directive Companies, the Rules do not apply to takeover bids for securities issued by collective investment undertakings, other than the closed-end type, or for securities issued by a Central Bank of a Member State. The Rules will apply to a bid in respect of a closed-end investment company formed under Part ~~XIII~~ 24 of the Companies Act~~, 1990~~ 2014.

~~(b)Directive~~ (b) Takeovers not being "Takeover bids" and "Other Relevant ~~Companies and Non-Directive~~ Transactions" in respect of Relevant Companies

The Act and the Rules also apply to takeovers which are not "takeover bids" for the purposes of the Regulations and to "other relevant transactions" which do not fall within the scope of the Regulations in respect of relevant companies under the Act.

Relevant Companies

~~The Act and the Rules apply to takeovers (not being takeover bids) and other relevant transactions in respect of those Directive Companies which are (otherwise than by virtue of the Regulations) also relevant companies under the Act ("Directive Relevant Companies") and of companies which fall within the definition of "relevant company" in section 2 of the Act but which do not fall within the scope of the Regulations ("non-Directive Relevant Companies"). In summary, a relevant company, as defined in section 2 of the Act, means (i)~~ Section 2(a) and (b) of the Act, includes as a "relevant company" any public limited company or other body corporate incorporated in the State any of whose securities are authorised for trading (or have been so authorised within five years prior to the relevant proposal) on a market regulated by a "recognised stock exchange" (~~the Irish Stock Exchange~~ Euronext Dublin has been prescribed as such).

Section 2(c) and (~~ii~~d) of the Act includes as a "relevant company" a public limited company incorporated in the State, any securities of which are authorised to be traded, or have been so authorised within five years prior to the relevant proposal, on the London Stock Exchange, the New York Stock Exchange or Nasdaq.

The Minister for ~~Jobs,~~ Enterprise~~,~~, Trade and ~~Innovation~~ Employment (the "Minister") may prescribe other public limited companies to be relevant companies. A company will not constitute a "relevant company~~"~~ if the only category of its securities currently or within the preceding five years authorised for trading on such a stock exchange or market is non-voting debentures or bonds.

Undertakings for collective investment in transferable securities (UCITS) and investment companies within the meaning of Part ~~XIII~~ 24 of the Companies Act, ~~1990~~ 2014 are excluded under the Act from the definition of relevant companies.

The applicability of the Act and the Rules is not affected by the location of a relevant company's head office or place of central management or by such matters as taxation residence.

In cases where securities of an offeree (including depositary receipts representing such securities) are held by persons resident in other jurisdictions or are quoted on markets in other jurisdictions, the offeree and the offeror should each

consult the Panel in relation to any applicable legal or regulatory requirements in those jurisdictions which may affect the application of the Rules or compliance with them.

~~*(c) Takeover Bids*~~

~~The Regulations and the Rules are concerned with regulating takeover bids for transferable voting securities of Directive Companies. A "takeover bid" or "bid" is defined in the Regulations as:~~

> ~~"a public offer (other than by the offeree company itself) made to the holders of the securities of a company governed by the law of a Member State to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with the law of a Member State".~~

~~Control in relation to a takeover bid is determined by reference to the definition of "control" in the Act which in relation to a Directive Company (other than those Shared Jurisdiction Companies which have their registered office in another Member State in which case "control" would be determined by the rules of that Member State) is the holding, whether directly or indirectly, of securities of the company that confer, in aggregate, not less than 30% (or such other percentage as may be prescribed) of the voting rights in that company.~~

~~It is important to note that a mandatory offer is required under Rule 9 where a holding of 30% or more of the voting rights in a Directive Company is acquired or a holding of less than 30% of such voting rights increases to 30% or more, or where, except in the case of a Shared Jurisdiction Company, a holding of 30% or more of the voting rights increases by more than 0.05% within any period of 12 months.~~

~~*(d)*~~Takeovers (not being takeover bids) and other relevant transactions

~~The Act and the Rules apply to takeovers (not being takeover bids) and other relevant transactions relating to Directive Relevant Companies and non-Directive Relevant Companies.~~

A takeover (which in this context does not include a takeover bid) is defined in the Act as:

"(a) any agreement or transaction (including a merger) whereby or in consequence of which control of a relevant company is or may be acquired; or

(b) any invitation, offer or proposal made, or intended or required to be made, with a view to concluding or bringing about such an agreement or transaction."

Control is defined in the Act, in relation to a relevant company, as the holding whether directly or indirectly, of securities that confer, in aggregate, not less than 30% (or such other percentage as may be prescribed) of the voting rights in that company.

The Rules (Rule 3.1 of Part A) specify other relevant transactions. These include substantial acquisitions of securities (dealt with in the Substantial Acquisition Rules), certain partial offers and certain reverse takeovers. The Rules do not apply to offers for non-voting, non-equity securities unless they are offers required by Rule 15 of Part B.

It is important to note that a mandatory offer is required under Rule 9 (or, where applicable, Rule 37) of Part B where:

~~*(i)*~~(i) a holding of 30% or more of the voting rights in a relevant company is acquired or a holding of less than 30% of such voting rights increases to 30% or more, or

~~*(ii)*~~(ii) a holding of 30% or more (but, in the case of a single holder, not more than 50%) of the voting rights in a relevant company increases by more than 0.05% within any period of 12 months.

~~5.~~5. THE PANEL

~~*(a)*~~(a) Legal structure, Members and Directors of the Panel

The Panel is incorporated pursuant to the Act as a company limited by guarantee, having no share capital. The Memorandum and Articles of Association of the Panel provide that the principal objects of the Panel are:

"(a) to monitor and supervise takeovers and other relevant transactions so as to ensure that the provisions of the Act and any rules thereunder are complied with as respects each such transaction; and

~~(b)~~(b) to make rules under section 8 of the Act, for the purposes mentioned in that section, in relation to takeovers and other relevant transactions."

The Act provides that the Panel shall have power to do anything which appears to it to be requisite, advantageous or incidental to, or which appears to it to facilitate, either directly or indirectly, the performance by it of its functions as specified in the Act or in its Memorandum of Association and is not inconsistent with any enactment for the time being in force.

Under the Regulations, the Panel is designated as the competent authority for the purposes of Article 4(1) of the Directive.

The Act provides that the Members of the Panel are the following five bodies, or in certain cases, their corporate or personal nominee:

- The Consultative Committee of Accountancy Bodies - Ireland (by a nominee)
- The Law Society of Ireland
- The Irish Association of Investment Managers
- The ~~Irish~~ Banking & Payments Federation ~~(by a nominee)~~Ireland
- The Irish Stock Exchange

The Board of the Panel comprises the Chairperson and Deputy Chairperson who are appointed by the Governor of the Central Bank of Ireland, and an appointee from each of the above five bodies; there is also provision for up to three additional Directors to be co-opted by the existing Directors. The Act also provides for the Governor of the Central Bank and the nominating bodies to designate one or more alternates for each Director appointed by them, which facilitates the functioning of the Panel when Directors are unavailable or are faced with a potential conflict of interest in relation to a case under consideration.

(b) The Panel Executive

The Panel works on a day to day basis through the office of the Director General ("the Executive"), which deals with the general administration of the Panel and the Rules, including consideration of queries and submissions which do not require consideration by the Board of the Panel. The Executive is responsible for monitoring dealings in the shares of relevant companies, and is available for consultation and to give guidance before and during takeover transactions. However, the statutory powers of the Panel to make rulings and give directions pursuant to the Act are discharged by the Board ~~alone~~.

Parties and their advisers are strongly advised to consult the Executive in the first instance, if there is any basis for doubt as to the status of any relevant activity or circumstance under the Rules.

~~(c)~~(c) Confidentiality and Disclosures to other Persons

The Act requires that members, directors and employees of and advisers to the Panel observe professional secrecy in relation to matters not in the public domain; the Act details permitted exceptions to this requirement, under which the Panel is enabled, inter alia, to co-operate with other authorities such as the ~~Irish Stock Exchange~~ Euronext Dublin and with bodies corresponding to the Panel in other jurisdictions.

The Regulations require the Panel to supply information to relevant authorities in member states of the European Communities or in states within the European Economic Area where it is necessary for the application of measures adopted in those states to implement the Directive.

(d) Annual Report

The Act provides for the submission of an annual report by the Panel to the Minister who lays the report before the Houses of the Oireachtas.

~~6~~6. PROCEDURES

~~(a)~~(a) Notifying the Panel; Address for Service

~~Rule 2.9 of Part B requires that any announcement~~ Announcements under the Rules must be made in accordance with Rule ~~2.9~~30.1 of Part B. Rule ~~2.11~~ 2.13 of Part B requires that, at the commencement of an offer period, the offeror and the offeree, their directors and advisers and, in the case of the offeror, any person acting in concert with it, furnish the Panel with an address for service within the State~~,~~ and with ~~facsimile facilities~~an email address, so that communications from the Panel, including rulings and directions, can be received by the addressee in timely fashion.

(b) Panel Decisions

Formal decisions on the interpretation and enforcement of the General Principles and the Rules are made by the Board of the Panel in the form of rulings and directions. Rulings may be made by the Panel of its own volition, or on the application of any interested person. Where appropriate in order to ensure that the General Principles and the Rules are complied with, the Panel may give a direction to a party or parties to take specified action, or to refrain from a specified action. Where it considers it appropriate, the Panel may publish any ruling or direction given by it.

The Panel is entitled under the Act to require any party to a takeover or other relevant transaction to disclose to it any information which it requires for the performance of its functions. The Panel expects full and prompt ~~co-~~ co-operation from those from whom it requires information so that its decisions may be properly informed and given as speedily as possible.

The Panel is entitled under the Regulations to require a person to provide to it, at any time on request being made by the Panel therefor, all the information in the person's possession concerning a takeover bid that is deemed necessary by the Panel for the purpose of the Panel performing its functions under the Regulations.

~~(c)~~(c) Hearings by the Panel

The Panel has power under section 11 of the Act to conduct hearings for the purpose of exercising the powers conferred on the Panel to issue rulings, directions, advice, admonitions or censures. Prior to such a hearing, the parties concerned will be asked to set out their case briefly in writing, for the benefit of the Panel.

The Act provides that if the Panel considers that the interests of any party concerned render it appropriate, a hearing or any part of it may be held in private. Accordingly, any party which considers that its interests justify a private hearing should submit a written request stating the reasons why it is considered appropriate that the hearing should be held in private. Any such request will be considered by the Panel before the relevant hearing.

The Act gives the Panel powers to compel the appearance of witnesses and the production of documents and other material. The Panel may also require that evidence be given under oath or affirmation. A witness before the Panel is entitled to the same immunities and privileges as a witness before the High Court.

At the hearing, the case can be presented in person by the parties or their advisers, including legal advisers. The parties are permitted to call such witnesses as may be necessary. The Board may question or invite statements from any of those present and may call additional witnesses. Parties and their advisers may also question witnesses.

Parties and their advisers are entitled to be present throughout the hearing and to see papers submitted to the Board in connection with the hearing. The parties involved in the hearing are absent during the Board's consideration of the matter.

The Panel recognises that it is important that its procedures are seen to be impartial. Accordingly, where a matter under consideration is likely to create a conflict of interest for any director, that director will withdraw from hearings or meetings of the Board concerned with that matter.

It is the Panel's policy in the case of important decisions to publish its conclusions and the reasons for them so that its activities may be understood publicly.

(d) Enquiries

The Panel may institute an enquiry into the conduct of any person as provided in section 10(1) of the Act where it has reasonable grounds for believing that a contravention of the General Principles or Rules has occurred or may occur. The ~~procedures followed in such a case are similarto those set out above, but in addition the~~ Panel will advise the person concerned in advance of the matters which, in the Panel's opinion, require that an enquiry be held and will invite the person to make written submissions and/or to submit any documents which it considers appropriate. Following the enquiry, if it thinks fit, the Panel may advise, admonish or censure the person concerned in relation to his or her conduct and may also publish the result of the enquiry, including the terms of any advice, admonition or censure administered.

~~7.~~7. THE HIGH COURT

(a) Panel applications

The Panel may apply in a summary manner to the High Court for an order to enforce a ruling or direction. The Court has extensive powers, including power to annul any transaction that has been carried out in contravention of the Panel's ruling or direction. The Court may also refuse to make any order.

(b) Judicial review

A person may question the validity of a ruling or direction of the Panel, a Rule itself or any derogation from or waiver of a Rule only by way of application to the High Court for judicial review of the matter concerned.

~~(c)~~(c) Appeals in relation to advice, admonition or censure by the Panel

A person who has been advised, admonished or censured by the Panel may appeal the matter to the High Court. The Court may confirm the Panel's decision or annul it, and in the latter case will either direct the Panel to conduct a fresh enquiry or require the Panel to publish a notice of the decision of the Court.

~~8.~~8. THE GENERAL PRINCIPLES

The following is the text of the Schedule to the Act, as amended, setting out the principles on which the Rules are based and by reference to which (as well as those Rules themselves) the Panel considers the making of rulings and giving of directions under section 9, derogations and waivers under section 8(7) and advice, admonitions and censures under section 10 of the Act:

PRINCIPLES APPLICABLE TO THE CONDUCT OF TAKEOVERS, ETC.

~~1.~~1. All holders of the securities of an offeree of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.

~~2.~~ 2. The holders of the securities of an offeree must have sufficient time and information to enable them to reach a properly informed decision on the offer; where it advises the holders of securities, the board of the offeree must give its views on the effects of implementation of the offer on employment, conditions of employment and the locations of the offeree's places of business.

~~3.~~3. The board of an offeree must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the offer.

~~4.~~4. False markets must not be created in the securities of the offeree, of the offeror or of any other company concerned by the offer in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.

~~5.~~5. An offeror must announce an offer only after ensuring that he or she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.

~~6.~~6. An offeree must not be hindered in the conduct of its affairs for longer than is reasonable by an offer for its securities.

~~7.~~7. A substantial acquisition of securities (whether such acquisition is to be effected by one transaction or a series of transactions) shall take place only at an acceptable speed and shall be subject to adequate and timely disclosure.

NOTES ON THE TAKEOVER RULES

These Notes do not constitute a part of the Takeover Rules (referred to as the “Rules” in these Notes) nor do they constitute a legal interpretation of the Rules. These Notes are intended merely to provide an indication for practitioners as to some of the considerations to which the Panel may have regard in the application of the Rules. In particular, these Notes should in no way be interpreted as prescribing the circumstances in which any discretion of the Panel under the Act or the Regulations will or may be exercised. The Panel emphasises that nothing in these Notes is intended in any way to restrict or fetter the manner in which any of its discretionary powers is exercised.

NOTES ON PART A - PRELIMINARY RULES NOTES ON RULE 2

NOTES ON RULE 2.1

1. "Acting in concert"

Two or more persons will be deemed, for the purposes of the Act, to be "acting in concert" as respects a takeover (excluding a takeover bid) or other relevant transaction "if they co-operate on the basis of an agreement, either express or tacit, either oral or written, aimed at: (i) either (I) the acquisition by any one or more of them of securities in the relevant company concerned, or (II) the doing, or the procuring of the doing, of any act that will or may result in an increase in the proportion of securities in the relevant company concerned held by any one or more of them; or (ii) either (I) acquiring control of the relevant company concerned, or (II) frustrating the successful outcome of an offer made for the purpose of the acquisition of control of the relevant company concerned".

That definition of "acting in concert" in the Act does not apply in respect of takeover bids or bids (as defined in the Regulations) for Directive Companies. Regulation 8 of the Regulations sets out the relevant definition of acting in concert for takeover bids and provides that""persons acting in concert" means persons who cooperate on the basis of an agreement, either express or tacit, either oral or written, aimed at acquiring control of the offeree ~~company~~ or at frustrating the successful outcome of a bid".

Under the Act and the Regulations, certain affiliated companies are deemed to be acting in concert for the purposes of both of the above definitions. Under Rule 3.3(b) and, except in the case of Shared Jurisdiction Companies (i.e. those companies that are relevant companies under the Act solely by virtue of the Regulations), Rule 7.2 of Part B, certain persons are presumed (in accordance with section 8(1)(d) of the Act) to be acting in concert for the purposes of both definitions until the contrary is established to the satisfaction of the Panel.

These definitions have particular relevance to offers under Rule 9 or, in the case of the definition of "acting in concert", Rule 37 of Part B. Further guidance with regard to behaviour which constitutes acting in concert is given in the Notes on Rule 9.1.

Although the single expression "acting in concert" is used throughout the Rules, which of the above meanings it bears in any particular instance will depend on the type of transaction concerned (Rule ~~2.1(b)(vi~~2.1(b)(v)).

~~(a)~~(a) Break up of concert parties

Where the Panel has ruled that a group of persons is acting in concert, it will be necessary for clear evidence to be presented to the Panel before it can be accepted that the position no longer obtains.

(b) Underwriting arrangements

The relationship between an underwriter (or sub-underwriter) of a cash alternative offer and an offeror may be relevant for the purpose of this definition. Underwriting arrangements on arm's length commercial terms would not normally amount to an agreement within the meaning of acting in concert. The Panel recognises that such underwriting arrangements may involve special terms determined by the circumstances, such as weighting of commissions by reference to the outcome of the offer. However, in some cases, features of underwriting arrangements, for example, the proportion of the ultimate total liability assumed by an underwriter, the commission structure or the degree of involvement of the underwriter with the offeror in connection with the offer, may be such as to lead the Panel to conclude that a sufficient level of understanding has been created between the offeror and the underwriter to amount to an agreement within the meaning of acting in concert. In cases of doubt, the Panel should be consulted.

(c) Companies Act, ~~1990~~2014

The definitions of "acting in concert" and "persons acting in concert" apply only in respect of the relevant provisions of the Rules. Separate provisions dealing with "agreements to acquire interests in a public limited company" are contained in the Companies Act, ~~1990~~2014. Any Panel opinion expressed in relation to "acting in concert" or "persons acting in concert" can relate only to the Rules and should not be taken as guidance on the interpretation of such statutory provisions.

(d) Standstill agreements

Agreements between a company, or the directors of a company, and a shareholder which restrict the shareholder or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or reducing shareholdings, may be relevant for the purposes of these definitions. In cases of doubt, the Panel should be consulted. However, the Panel will not normally consider the parties to a standstill agreement to be acting in concert provided that the agreement does not restrict any of the parties from either:

(a) accepting an offer for the company's shares at any stage; or

(b) agreeing to accept any offer for the company's shares either before or after its announcement.

The same approach will normally apply to an agreement to which the company's financial adviser or nominated adviser and/or its sponsor and/or underwriter, rather than the company itself (and/or its directors), is a party, for example, an agreement entered into at the time of an equity offering with a view to ensuring an orderly aftermarket in the company's shares.

(e) Consortium offers

Investors in a consortium (for example, through a vehicle company formed for the purpose of making an offer) will normally be treated as acting in concert with the offeror. 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. (See the definitions of "connected fund managers" and "connected principal traders" in Rule 2.2 and see also Rule 7.2 of Part B regarding discretionary fund managers.)

(f) Pension Schemes

The presumption that a company is acting in concert with any of its pension schemes will normally be rebutted if it can be demonstrated to the Panel's satisfaction that the assets of the pension scheme are managed under an agreement or arrangement with an independent third party which gives such third party absolute discretion regarding dealing, voting and offer acceptance decisions relating to any securities in which the pension scheme is interested. Where, however, the discretion given is not absolute, the presumption will be capable of being rebutted, provided that the pension scheme trustees do not exercise any powers they have retained to intervene in such decisions.

(g) Sub-contracted fund managers

Where a fund manager sub-contracts discretionary management of funds to another independent fund manager, the Panel will normally regard those funds as controlled by the latter if the discretion regarding dealing, voting and offer acceptance decisions relating to the funds, originally granted to the fund manager, has been transferred to the sub-contracted fund manager and the presumption in Rule 3.3(b)(iv) will apply to the sub-contracted fund manager in respect of those funds. This approach assumes that the sub-contracted fund manager does not take instructions from the beneficial owner or from the originally contracted manager on the dealings in question and that fund management arrangements are not established or used to avoid disclosure.

(h) Irrevocable commitments

A person will not normally be treated as acting in concert with an offeror or the offeree by reason only of giving an irrevocable commitment. However, the Panel will consider the position of such a person in relation to the offeror or the offeree (as the case may be) in order to determine whether he is acting in concert if either:

(a) the terms of the irrevocable commitment give the offeror or the offeree (as the case may be) either the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to the shares or general control of them (other than an undertaking to vote the relevant shares in accordance with the instructions of the offeror that is limited to the course of the offer or, if earlier, until the irrevocable commitment otherwise ceases to be binding and is limited to matters which relate to ensuring that the offer or takeover scheme is successful).; or

(b) the person acquires an interest in more shares.

The Panel should be consulted before the acquisition of any interest in shares in such circumstances.

2. "Company"

The Act defines "company" as "a company (within the meaning of the Companies Act, ~~1963~~2014) or any other body corporate, whether incorporated in the State or elsewhere".

3. "Control"

The term "control" is defined in the Act as meaning, in relation to a relevant company, "the holding, whether directly or indirectly, of securities of the company that confer, in aggregate, not less than 30% (or such other percentage as may be prescribed) of the voting rights in that company". By virtue of the Regulations, "control" is given the same meaning in relation to takeover bids, other than bids for Shared Jurisdiction Companies which do not have their registered office in the State. As used in the Rules, the term "control" has the same meaning in relation to companies which are not relevant companies.

4. "Dealing"

As securities borrowing and lending transactions and sale and repurchase (or "repo") transactions involve transfers of title to the securities concerned, a "borrowing"/"purchase" of relevant securities in such a transaction will normally be a dealing.

~~5.~~5. “Derivatives”

The term “derivative” is intentionally defined widely to encompass all types of derivative transactions. However, the Panel will consider requests for derogations so that derivative transactions that are not connected with an offer or a possible offer need not be restricted or disclosed. The Panel will not normally regard a derivative which is referenced to a basket or index of securities, including relevant securities, as connected with an offer or potential offer if at the time of dealing the relevant securities in the basket or index represent less than 1% of the class in issue and, in addition, less than 20% of the value of the securities in the basket or index.

~~6.~~6. “Exempt fund managers” and “exempt principal traders”

~~(a)~~(a) Discretionary fund managers and principal traders must apply to the Panel in order to seek the relevant exempt status and will have to comply with any requirements imposed by the Panel as a condition of its granting such status.

~~(b)~~(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 of Part B. Connected exempt principal traders and connected exempt fund managers must comply with the relevant provisions of Rule 8 of Part B.

~~(c)~~(c) When a principal trader 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 principal trader 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.

(d) In appropriate cases, a trading entity may be granted exempt status on an ad hoc basis subject to the satisfaction of certain conditions. References in the Rules to exempt principal traders include persons granted such ad hoc exempt status, for so long as the grant of such exempt status remains valid and subject always to the conditions on which such ad hoc exempt status is granted in any particular case.

7. “Offer period”

The names of companies which are deemed by the Panel to be in an offer period are ~~published~~ set out in the disclosure table which is ~~issued~~ published by the Panel.

8. “Offeree”

The term is defined in the Act as meaning “a relevant company –

~~(a)~~(a) any securities of which are the subject of an offer that has been made or is intended or required to be made, or

~~(b)~~(b) in respect of which, or in connection with which, a person does any act in contemplation of making an offer to holders of securities in that company”.

The Rules adopt that definition and provide that, where the Panel is the competent authority to supervise a takeover bid in respect of such company, the term “offeree” includes “a company –

~~(i)~~(i) any transferable voting securities of which are the subject of a bid that has been made or is intended or required to be made, or

~~(ii)~~(ii) in respect of which, or in connection with which, a person does any act in contemplation of making a bid to holders of transferable voting securities of that company”.

9. “Offeror”

The Act defines this term as meaning “a person who makes, or intends or is required to make, an offer or does any act in contemplation of making an offer”.

The Rules adopt that definition and provide that, where the Panel is the competent authority to supervise a takeover bid in respect of a company, the term “offeror” includes “a person who makes, or intends or is required to make, a bid or does any act in contemplation of making such a bid”.

10. “Quantified Financial Benefits Statement”

Where, in competition with an offer or possible offer, an offeree announces that it has agreed terms on which it intends to sell all or substantially all of the company’s assets (excluding cash and cash equivalents) and that it intends to return to shareholders all or substantially all of the company’s cash balances (including the proceeds of any asset sale), a

statement by the offeree quantifying the cash sum expected to be paid to shareholders (either as a specific amount or as a range) will be treated as a quantified financial benefits statement. See also Rule 4.6 of Part B.

11. "Recognised intermediary"

~~(a)~~(a) If any part of the trading operations of a bank or other financial institution wishes to be recognised by the Panel as a recognised intermediary, it must apply to the Panel to be granted such status. If so recognised, it will have to comply with any requirements imposed by the Panel as a condition of its granting such status.

~~(b)~~(b) The Panel will consider granting recognised intermediary status to trading desks if they trade as principal primarily in a client-serving capacity, i.e. in order to fulfil orders received from clients, to respond to a client's requests to trade, or to hedge positions arising out of those activities. The criteria which must be satisfied in order for a desk to be granted recognised intermediary status by the Panel are set out in Note (f) below. The Panel will normally, on application, grant recognised intermediary status to those entities that have been granted the corresponding status by the U.K. Panel on Takeovers and Mergers.

~~(c)~~(c) Recognised intermediary status is relevant solely for the purposes of Rule ~~8.3(e~~8.3(f) of Part B and only to the extent that the recognised intermediary is acting in a client-serving capacity. Consequently, subject to Rule ~~8.3(e~~8.3(f), a recognised intermediary will not be required to publicly disclose under Rule 8.3(a) to (~~d~~e) of Part B any dealings by it in relevant securities during an offer period provided it is acting in a client-serving capacity.

~~(d)~~(d) Any dealings by a recognised intermediary which is not acting in a client-serving capacity will not benefit from the dispensation afforded by Rule ~~8.3(e~~8.3(f), with the result that all such dealings by it will be subject to the provisions of the Rules as if that dispensation did not apply.

~~(e)~~(e) Where a recognised intermediary is, or forms part of, an exempt principal trader, its recognised intermediary status will fall away if its exempt status falls away.

~~(f)~~(f) In determining whether a desk should be granted recognised intermediary status, the Panel will need to be satisfied as to each of the following matters in respect of the desk in question:

~~(i)~~(i) that the entity of which the desk forms part has been authorised by the ~~*Financial Regulator*~~ Central Bank of Ireland with permission (without material limitation) to deal as principal in Irish equities or in derivatives or options referenced to or in respect of such equities. Where it is based overseas, the entity must have been granted equivalent authorisation and permission by its home state regulator to deal in Irish equities or in derivatives or options referenced to it in respect of such equities;

~~(ii)~~(ii) that where the desk deals as principal it does so primarily to fulfil orders received from clients, to respond to a client's requests to trade, or to hedge positions arising out of those dealings and not on a proprietary basis, i.e. where it deals as principal, it does so primarily in a client-serving capacity;

~~(iii)~~(iii) that the desk is suitable for recognised intermediary status having regard to all the circumstances, including (1) the connection of the entity of which it forms part with any other person, and (2) the need to ensure that its activities will not be carried on with the purpose of assisting an offeror or offeree or any person acting in concert with either of them;

~~(iv)~~(iv) that the desk and the entity of which it forms part have appropriate systems and compliance policies and procedures in place in order to identify, distinguish between and monitor their client-serving dealings and interests and their proprietary trading dealings and interests;

~~(v)~~(v) that, if the desk is part of, or if the entity of which it forms part is or is part of, a wider organisation, or is associated with any other person, the desk's links with the rest of the organisation or with such person are not likely to influence adversely the Panel's supervision of its activities or its compliance with the Rules; and

~~(vi)~~(vi) that, if the desk is part of, or if the entity of which it forms part is or is part of, a wider organisation, or is associated with any person, which deals as principal on a proprietary basis or carries out investment company, investment management, investment advisory or collective investment or other investment fund functions, there is appropriate functional separation between the activities of the desk and of those other functions.

12. "Relevant company"

In summary, a "relevant company" is defined in the Act as: (i) any public limited company or other body corporate incorporated in the State any of whose securities are authorised for trading (or have been so authorised within five years prior to the relevant proposal) on a market regulated by a "recognised stock exchange" (~~the Irish Stock Exchange~~ Euronext Dublin has been prescribed as such) and (ii) a public limited company incorporated in the State, any securities of which are authorised to be traded, or have been so authorised within five years prior to the relevant proposal, on the London Stock Exchange, the New York Stock Exchange or Nasdaq. The Minister may prescribe other public limited companies to be relevant companies. A company will not constitute a relevant company if the only category of its

securities currently or within the preceding five years authorised for trading on such a stock exchange or market is non-voting debentures or bonds.

The Rules adopt that definition and provide that the term "relevant company" includes "a company which by virtue of Regulation 4(3), is to be regarded as a relevant company for the purposes of the application of the Act", that is, a company a bid for which the Panel has jurisdiction to supervise.

13. "Relevant securities"

It should be noted from the definition of relevant securities that, while there are only four **categories** of relevant securities in the definition, a number of different **classes** of relevant securities may exist within each category. For example, category (i) would include two such classes if the offeree has ordinary shares and preference shares and both are the subject of the offer in question. The four categories themselves are not mutually exclusive, as can be seen in the above example, where the ordinary shares of the offeree would also be equity share capital of the offeree within category (ii).

The number of relevant securities of a particular class in which a person is deemed to be interested is normally the gross number arrived at by aggregating the number of such securities falling under each of sub- paragraphs (1) to (6) in paragraph (b)(i) (long position) of Rule ~~2.6~~ 2.5 of Part A. If a person's interest in relevant securities falls within more than one of those subparagraphs, he or she will be deemed to be interested in the highest number determined under the relevant paragraphs.

Category (iv) of the definition of relevant securities refers to securities or other interests of the offeree or offeror conferring rights to convert into or to subscribe for new securities which, when issued, will fall within any of categories (i) to (iii). In accordance with Rule ~~2.6(e~~2.5(e) of Part A, a person interested in category (iv) securities or other instruments is deemed not to be interested in any new shares that may be issued upon the exercise of such rights until such time as the right is exercised and he or she acquires the new shares.

The reference in category (iv) of the definition of relevant securities to "any other instruments" is intended to capture rights to convert into or to subscribe for new securities of an offeree or an offeror where the rights are, for example, contained within a bilateral agreement with an offeree or an offeror, including an employee share option plan. Such rights are deemed to be relevant securities and the holders of those rights will have an interest in relevant securities.

14. "Reverse takeover transaction"

See definition in Rule 2.1(a)~~.~~

A reverse takeover transaction results in the aggregate interest of the existing shareholders of the relevant company which issues new voting securities becoming a minority of the enlarged voting capital of the company. Such a transaction constitutes either a takeover of that company under the Act or another relevant transaction pursuant to Rule 3.1(c). See Rules 3.2 and 40 of Part B.

~~14.~~15. "Rights" over voting securities

Broadly speaking, the expression "rights over voting securities" used in Rule 5 of Part B and in Rule 3 of the Substantial Acquisition Rules means rights in respect of voting securities where the rights constitute less than full ownership of the voting securities concerned, for example, the rights arising from an agreement or an option to purchase those voting securities, irrespective of whether or not those rights entitle their holder to control the exercise of the voting rights conferred by the underlying securities. If the rights in question do entitle their holder to control the exercise of the voting rights conferred by the underlying securities, the rights will themselves constitute a voting security. Voting securities may be counted only once in any aggregation under Rule 5 of Part B or under Rule 3 of the Substantial Acquisition Rules.

16. "Security"

Broadly speaking, "security" is defined by the Act as any interest in the share capital or loan capital of a company. It includes rights in respect of such an interest, for example, the rights arising by virtue of an agreement to purchase that interest or an option to acquire the interest or the right to control the exercise of the voting rights attaching to that interest whether or not the agreement, option or right confers a proprietary interest in the underlying security.

The term "securities" is defined in the Regulations as meaning "transferable securities carrying voting rights in a company", which are referred to in the Rules as "transferable voting securities".

Rights in respect of shares conferring voting rights held through the Euroclear Bank, DTC or other settlement systems are securities and transferable voting securities.

See also Note 9 on Rule 9.

17. “Voting right”

The Act defines a “voting right”, in relation to a company, as “a right exercisable for the time being to cast, or to control the casting of, a vote at general meetings of members of the company, not being such a right that is exercisable only in special circumstances”. Allotted but unissued shares do not, pending their issue, confer voting rights. However, for the purposes of some Rules, such as Rules 5.1 and 10.1 of Part B, allotted but unissued shares which will upon issue carry voting rights are deemed to have been issued.

18. “Voting security”

“Voting security” or “security conferring voting rights” includes a share that confers voting rights and a right, held independently of the relevant share, to control the exercise of the voting rights conferred by that share. A security such as an option to purchase shares that confer voting rights will not itself be regarded as a voting security unless a right to control the exercise of the voting rights conferred by those shares is attached to the option.

~~NOTE ON RULE 2.4~~

~~Despatch or making available on a website of documents or information~~

~~The Panel will not normally be in a position to grant any derogation or waiver in relation to the requirement to despatch or make available on a website documents or information to shareholders or (in the case of a takeover bid) employee representatives or employees of the offeree who are located within the EEA.~~

~~Where the Rules require a person to provide or make available on a website documents or information to representatives of employees or to employees and such person considers that circumstances outside its control may prevent full compliance, such person should consult the Panel, which may specify further action.~~

NOTES ON RULE ~~2.6~~2.5

~~1.~~1. Interests of two or more persons

As a result of the way in which interests in relevant securities are categorised, two or more persons may be deemed to be interested in the same securities. For example, where a shareholder grants a call option to another person, the shareholder will be interested in the shares the subject of the option as a result of subparagraph (1) of the types of interests in relevant securities specified in paragraph (b)(i), and the option holder will be interested in those shares as a result of subparagraph (2).

~~2.~~2. Proxies and corporate representatives

A person will normally not be deemed to have an interest in relevant securities by reason only of his or her having been appointed as a proxy to vote at a specified general or class meeting of the company concerned or having been authorised by a corporation to act as its representative at a general or class meeting or meetings.

3. Irrevocable voting commitments

An offeror or acquirer in a takeover scheme who obtains from a shareholder of the offeree or acquiree concerned an irrevocable commitment to vote at a general meeting or scheme meeting in favour of a resolution to approve or implement the offer or scheme will normally not, by reason only of that commitment, be deemed to have any interest in the shares held by that shareholder.

4. Security interests

Where a bank takes security over relevant securities by equitable mortgage in the ordinary course of its business and is not entitled to appropriate the relevant securities into its own name or to control the exercise of the voting rights conferred by the relevant securities, the bank is unlikely, in the absence of some special provision, to be deemed to have an interest in the relevant securities.

~~5.~~5. Other statutory or regulatory provisions

This definition of "interest" applies only in respect of the relevant provisions of the Rules. Any Panel view expressed in relation to interests in relevant securities relates only to the Rules and should not be taken as guidance on the interpretation of any other statutory or regulatory provision.

6. Gross interests

The Panel will normally not consent to offsetting positions being netted off against each other unless each of the following conditions is satisfied:

~~(a)~~(a) those positions are in respect of the same class of relevant security;

~~(b)~~(b) those positions are in respect of the same investment product;

~~(c)~~(c) except for the number of securities in question, the terms of those positions are the same, for example, as to strike price and, if appropriate, exercise period; and

~~(d)~~(d) the counterparty to those positions is the same in each case.

7. Securities borrowing/lending and sale/repurchase transactions

As securities borrowing and lending transactions and sale and repurchase (or "repo") transactions involve transfers of title to the securities concerned, the "borrower"/"buyer" will be deemed to be interested in any relevant securities that he or she "borrows"/"purchases".

~~8.~~8. Rules that relate to "interests in relevant securities"

The concept of interests in relevant securities is applied primarily in Rules ~~2.5~~2.7, 4, 8, 16, 17.1(b), ~~20.1~~, 20.2, 24 and ~~25.3~~ 25.4 of Part B. The concept has no application in other rules, notably Rules 5, 6, 9, 10, 11 and 37 of Part B, or in the Substantial Acquisition Rules.

NOTE ON RULE 3.3

Presumptions of concertedness – associated company

Under the Rules, a company is deemed to be an "associated company" of another company if that other company owns or controls 20% or more of the equity share capital of the first company. Pursuant to Rules 3.3(b)(i) and (ii), a company and various specified group companies, and any company of which any of those companies is an associated company, are presumed to be acting in concert with, amongst others, the directors of the first mentioned company.

In circumstances where a relevant company is an associated company of another company (the "shareholding company"), the presumption referred to above results in, amongst other things, all of the directors of the relevant company being presumed to be acting in concert with the shareholding company. One of the consequences of this is that the directors of the relevant company may not, in certain circumstances, be able, in effect, to acquire any securities of the relevant company (either through direct purchases in the market or, for example, through the exercise of share options) as such acquisitions may trigger a mandatory offer obligation. This is likely to arise where the aggregate shareholding of the directors and the shareholding company in the relevant company equals or exceeds 30% or is just below that level.

The Panel recognises that it may not always be appropriate to maintain the presumption in those circumstances. Consequently, the Panel may be prepared to consider a rebuttal of the presumption that the directors (and their families) are acting in concert with the shareholding company where it can be established that the directors are independent of the shareholding company. However, where the rebuttal is accepted by it, the Panel may wish to maintain the presumption during the course of an offer for the relevant company or whilst the directors of the relevant company have reason to believe that an offer in respect of it may be made in the near future ~~or whilst the directors of the relevant company are in the course of redeeming or purchasing or proposing to redeem or purchase its own securities~~. In other words, the rebuttal of the above presumption would not of itself operate to prevent the application of the presumption in Rule 3.3(b)(vi) in all circumstances.

NOTE ON RULE 4

See the reference to this Rule in paragraph 1 of the Introduction to the Takeover Rules.

NOTES ON PART B ~~–~~ PRINCIPAL RULES~~NOTES ON RULE 2~~

NOTES ON RULE 2.1

~~1.~~Warning clients

It should be an invariable routine for advisers at the very beginning of discussions to warn clients of the importance of confidentiality and security. It is vital that, at an early stage, a financial or legal adviser clearly explains to its client the requirements of Rule 2 and ensures that the client understands those requirements.

Attention should be drawn to the Rules, in particular to this Rule and to the restrictions on and the consequences of dealings in relevant securities, as well as to the provisions of Rules 19, 20 and 21.

~~*2. Proof printing*~~

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

NOTES ON RULE 2.2

1. Anomalous movements

The determination of when share price movements are anomalous cannot be reduced to defined terms. Any person in possession of relevant information, and who is in doubt as to whether a share price movement is anomalous, should consult the Panel. The Panel itself may determine that a share price movement is anomalous and may require the issue of an appropriate announcement. This determination will be made in the light of all relevant facts and not solely by reference to the absolute percentage movement in the share price. Facts which may be considered to be relevant in determining whether a price movement is untoward include general market and sector movements, publicly available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred.

2. An Approach

The Panel normally considers an approach to have been received when a director or representative of, or an adviser to, an offeree is informed by, or on behalf of, a potential offeror that it is considering the possibility of making an offer for the company. This may be at a very preliminary stage in the offeror's preparations and the manner of the approach may be informal and no more than broadly indicative. For example, there is no requirement for an approach to be made in writing, or for an indicative offer price (or any terms or conditions) to be specified, and it could be made as part of a conversation on unrelated matters.

3. Rules 2.2(c) and 2.2(d)

The Panel will not normally require an announcement to be made under Rule 2.2(c) and (d) if, at the time the rumour and speculation and/or anomalous movement in the offeree's share price occurred, the potential offeror had withdrawn its approach and/or ceased considering the possibility of making an offer unless the Panel considers that an announcement is necessary to avoid the creation of a false market..

Where subsequent to the rumour and speculation and/or anomalous movement in the offeree's share price, an offeror immediately withdraws its approach and or ceases considering the possibility of making an offer, the Panel will normally require that party to publish an announcement under 2.8..

4. Rule 2.2(e)

There is no generally applicable standard to define when an announcement under Rule 2.2(e) is appropriate consequent upon an increase in the number of people who have knowledge that discussions are taking place.

When such knowledge is likely to extend to persons other than those who need to know in the companies concerned and the immediate financial ~~and~~ , legal ~~,~~ , tax and accounting advisers to those companies, the Panel should be consulted unless an immediate announcement is to be made. In considering the number of parties to be consulted, the Panel will not normally count employee representatives of the offeree or the offeror towards the parties approached. It will however include, for example, potential providers of finance (whether equity or debt); shareholders in the offeror or the offeree; pension fund trustees; potential management team candidates; significant customers of, or suppliers to, the offeree; and potential purchasers of assets.

5. Rule 2.2(f)

Following an announcement pursuant to Rule 2.2(f), parties entering into discussions with the relevant company concerned, or with the holders of the shares available for sale, should consult the Panel for guidance on their obligations under the Rules.

6. Strategic Reviews

The Panel should be consulted at the earliest opportunity in all cases in which a company may wish to announce a strategic review. The Panel will normally treat an announcement of a strategic review as commencing an offer period in relation to the company if it refers specifically to an offer as one of the options to be considered as part of the strategic review or that it refers to the possibility of a formal sale process pursuant to Rule 2.2(f).

7. Consultation

The requirement for consultation in Rule 2.2 is interpreted strictly and the Panel should therefore be consulted by the offeror, or its financial adviser, if there is any rumour and speculation relating to a possible offer for the offeree and regardless of: (a) whether the rumour and speculation is specific to the possible transaction under consideration, for example, whether or not the potential offeror is named; or (b) the manner in which, or the medium by which, the rumour and speculation has been disseminated.

8. Rumour and speculation during an offer period

Once an offer period has commenced, there is no automatic requirement for: (a) the offeree to announce the existence of a new potential offeror from which it subsequently receives an approach, or with which it engages in talks; or (b) a new potential offeror which is actively considering making an offer to announce that fact.

Where, during an offer period, rumour and speculation specifically identifies a potential offeror which has not previously been identified in any announcement, the Panel will normally require an announcement to be made by the offeree or the potential offeror (as appropriate), identifying that potential offeror. Parties and their financial advisers should therefore put appropriate procedures in place to ensure that any announcement that is so required can be released promptly.

~~4.~~9. Rule 12(b)(iii) and (iv)(1)

Announcements by an offeror may be required under these rules, following the lapse of an offer pursuant to Rule 12(b)(i).

NOTE ON RULE 2.3

In order to avoid confusion, the parties should agree which of the potential offeror and the offeree has responsibility for making an announcement at any particular time following the initial approach. If the parties are unable to reach agreement as to where the responsibility rests, or if there is any doubt as to whether there has been an unequivocal rejection of an approach, the Panel should be consulted.

NOTES ON RULE 2.4

1. Responsibility statements

If an announcement under Rule 2.4(a) is considered necessary at short notice and if any director concerned cannot be contacted to confirm his participation in the responsibility statement required by Rule 19.2, the consent of the Panel to the making of the announcement may be sought under Rule 19.2(b).

~~*2. Period for clarification*~~

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

~~*3. Extension of time limit*~~

~~The Panel will normally not extend a time limit unless the offeree board approves the extension.~~

2. Consequences of subsequent acquisitions of interests in the relevant securities of the offeree

The acquisition of interests in the relevant securities of the offeree by a potential offeror whose existence has been announced (whether publicly identified or not), or which is a participant in a formal sale process, or by any person acting in concert with it may require immediate announcement by the potential offeror under Rule 7.1(b). See also Note 12 on Rule 8.

3. Indemnity and other dealing arrangements

Where the offeree an offeror or any person acting in concert with the offeree or an offeror enters into any dealing arrangement of the kind referred to in Rule 8.7 before the start of the offer period or the announcement that first identifies the offeror, details of the arrangement must be included in the announcement that commences the offer period or (as the case may be) first identifies the offeror.

4. Formal sale process

~~*4. Where time limits may not be imposed*~~

~~The Panel would not normally impose a time limit in respect of a possible offer where an offer has lapsed under Rule 12(b)(i) because the European Commission has either initiated proceedings in respect of a concentration or referred it to a competent authority of a Member State.~~

~~Nor would the Panel normally impose a time limit where, after a third party has announced a firm intention to make an offer, the potential offeror makes a statement that it is considering making a competing offer.~~

See Note 2 on Rule 2.6 on the possibility of the Panel granting a dispensation from the requirements of Rule 2.4(b) and (c).

NOTES ON RULE 2.5

~~19.3~~1. Approximate value

The Panel would not normally give consent to the making of a statement that indicates the approximate price or value at which the offeror is considering making an offer in respect of the offeree. An announcement by the offeror that it is considering making an offer "at a substantial premium" or "at or around" a stated price is unlikely to be acceptable, whereas a statement that the offeror is considering making an offer within a range of stated prices would normally be acceptable.

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~~*6. Statements by the offeree*~~

~~Every statement made by the offeree in relation to the terms on which an offer might be made should also make clear whether that statement is being made with the agreement or approval of the offeror. Where it is not being made with such agreement or approval, the statement should also include a prominent warning to the effect that there can be no certainty either that an offer will be made or as to the terms on which any offer might be made.~~

~~7.~~2. Right to vary form/mix of consideration

Where an offeror that has duly reserved the right to vary the form and/or mix of the consideration referred to in the statement concerned but remains bound to a specified minimum value of consideration exercises that right, the value of the consideration in any offer subsequently made by the offeror in respect of the offeree should be the same as or higher than the minimum value of the consideration specified in that statement, calculated as at the time of the announcement of the firm intention to make that offer.

3. Dividends

Where an offeror has made a statement to which Rule 2.5(c)(iii) applies and a dividend (or other distribution) is subsequently paid or becomes payable by the offeree to offeree shareholders, the offeror will be required to reduce the offer consideration by an amount equal to the dividend (or other distribution) so that the overall value receivable by the

offeree shareholders remains the same, unless, and to the extent that, the offeror has stated that offeree shareholders will be entitled to receive all or part of a specified dividend (or other distribution) in addition to the offer consideration.

4. Pre-conditions

Where the consent of the Panel is required by a person proposing to include in a Rule 2.4 announcement any pre-condition to the making of an offer, the Panel, if it grants consent, will normally require that any such ~~pre- conditional~~ preconditional possible offer announcement:

~~(a)~~(a) clearly state whether the pre-condition must be satisfied before an offer can be made or whether the pre-condition is waivable; and

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

5. Consequences of a Firm Announcement

See Rule 2.11.

NOTES ON RULE ~~2.5~~2.6

1. Deadline extensions

When a request to extend a deadline set under Rule 2.6(a) is made by the board of the offeree, the Panel will normally give its decision shortly before the time at which the deadline is due to expire. The board of the offeree may request different deadline extensions for different potential offerors or may request a deadline extension in relation to one potential offeror but not others.

2. Formal Sale Process

Where, prior to an offeror having announced a firm intention to make an offer, the board of the offeree announces that it is seeking one or more potential offerors for the offeree by means of a formal sale process, the Panel will normally grant a dispensation from the requirements of Rules 2.4(b) and (c) and Rule 2.6(a), such that any potential offeror which agrees with the offeree to participate in that process would not be required to be publicly identified under Rule 2.4(b) or (c) and would not be subject to the 28 day deadline referred to in Rule 2.6(a), for so long as it is participating in that process. Any such dispensation would be without prejudice to the application of Rules 2.2 and Rule 8. A potential offeror (and persons acting in concert with it) that is a participant in a formal sale process announced by the offeree must disclose any dealings in relevant securities of the offeree after the time at which it becomes a participant in the formal sale process in accordance with Rule 8.1(c) and, recognising that such announcement under Rule 8.1(c) will identify the offeror as such, the offeror must, at the same time as or before any such dealing disclosure, also make an announcement that it is a participant in the formal sale process (see Note 12 to Rule 8 and also Rule 7.1(b) and Note 4 on Rule 7 for when an immediate announcement will be required). The announcement must include a summary of the provisions of Rule 8.

The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought. Any dispensation given may be conditional on the announcement commencing the formal sale process:

(a) including the phrase “formal sale process” in the heading;

(b) stating that a formal sale process is being commenced;

(c) explaining how the formal sale process will be conducted and including an indicative timetable (or a commitment by the offeree to make a further announcement in relation to the timetable for the formal sale process);

(d) confirming whether the offeree is in discussions with, or is in receipt of an approach from, any potential offeror at the date of the announcement; and

(e) explaining that the Panel has granted a dispensation from Rules 2.4(b) and (c) and Rule 2.6(a).

In addition, the offeree may be required to commit to making announcements providing an update on the progress of the formal sale process, as appropriate. If at any stage the company decides not to proceed with the formal sale process, the company will be required to update the position promptly by way of an announcement.

See also note 12 on Rule 8.

3. Rule 2.6(d)

Where there is more than one potential competing offeror, in order to avoid uncertainty in the later stages of the offer timetable, the Panel may determine that the 53 day period commences following the publication not of the first published offer document but of the offer document which has established the offer timetable.

4. Rule 2.6(e)

In the circumstances described in Rule 2.6(e)(ii), there is no requirement for the offeree to name the potential competing offeror in its announcement albeit that potential competing offeror will be treated as if it had made a statement to which Rule 2.8 applies. But see also Rule 7.1(b).

5. Schemes of Arrangement

In the circumstances set out in Rule 2.6(d), see Section 3(1) of Appendix 4 where the first offeror is proceeding by means of a scheme of arrangement.

6. Rule 2.8 Restrictions

If, following the Panel having consented to a relaxation of the strict requirements of Rule 2.8(c)(i)(6), a possible offer announcement is made pursuant to Rule 2.2(c) before the expiry of the restricted period under Rule 2.8(c)(i), the announcement will not normally be required to specify a "put up" or "shut up" deadline under Rule 2.6(a) as the Panel considers that the imposition of such a deadline would be unnecessary given that the board of the offeree would be able to end the talks at any time during the restricted period and thereby re-impose the restrictions set out in Rule 2.8(c)(i) upon the person who has made the Rule 2.8 statement for the remainder of the restricted period. The announcement should explain why a "put up" or "shut up" deadline is not required to be specified and to state the date upon which the restricted period will end.

If an offer period commences and discussions between the offeree and the potential offeror are continuing at the end of the restricted period, the Panel will require a "put up" or "shut up" deadline to be announced by the offeree at that time. The deadline will be 5.00 pm on the 28th day following the end of the restricted period.

If, alternatively, talks are terminated following an announcement of a possible offer but before the end of the restricted period, the offeree will be required to make an announcement of that fact. Such an announcement will end the offer period and the person who has made the Rule 2.8 statement will then be bound by the restrictions set out in Rule 2.8(c)(i) for the remainder of the restricted period. The announcement will not, of itself, have the effect of extending the restricted period or commencing a new restricted period.

Once a restricted period has expired, Rules 2.2 and 2.6 will apply in the normal way to any obligation to make an announcement in relation to talks which may occur or continue after that date.

NOTES ON RULE 2.7

~~1.~~1. Financial adviser's responsibility – paragraph (a)

It is important that the offeror's financial adviser take all necessary steps to verify the offeror's capacity to implement the offer, in particular by a careful review of the offeror's current and prospective financial position and of any assumptions upon which the offeror's prospective financial position is predicated.

~~2.~~2. Unambiguous language – paragraph (b)

The language used in announcements should clearly and concisely reflect the position being described. In particular, the word "agreement" should be used with the greatest care. Statements which may give the impression that persons have committed themselves to certain courses of action (for example, accepting in respect of their own shares) if they have not in fact done so should be avoided, and if any agreement or transaction is subject to conditions, those conditions must be disclosed explicitly.

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

See Rule 32.4.

~~4.~~4. Pre-conditions

See Rule 13.2.

5. Terms of An Offer

Where it is a condition of the offer that a transaction agreement entered into between the offeror and offeree not have been terminated, compliance with Rule 2.7(b) requires that the termination events specified in the transaction agreement be listed as conditions.

NOTES ON RULE ~~2.6~~2.8

1. Prior consultation

Any person considering issuing such a statement is recommended to consult the Panel in advance.

2. Panel consent under Rule 2.8 (b) or (c)

Having regard to the extensive circumstances in paragraph (c)(ii) in which a statement can be set aside, the practice of the Panel is to consent to a setting aside in other circumstances in exceptional cases only.

3. Media reports

When considering the application of this rule, the Panel will take into account not only the statement itself but the manner of any subsequent public reporting of it. Advisers should therefore ensure that directors and officials of companies are warned that they must consider carefully the implications of Rule 2.8, particularly when giving interviews to, or taking part in discussions with, the media. It is very difficult after publication to alter an impression given or a remark attributed to a particular person. Control of any possible abuse lies largely with the person being interviewed.

In appropriate circumstances, the Panel will require a statement of retraction or clarification.

4. Significant Asset Purchases

(a) In assessing whether assets are significant for the purpose of Rule 2.8(c)(i)(7) the Panel will normally have regard to factors including the following:

(i) the aggregate value of the consideration to be paid compared with the market capitalisation of the offeree;

(ii) the value of the assets to be acquired compared with the assets of the offeree; and

(iii) the operating profit (i.e. profit before tax and interest and exceptional items) attributable to the assets to be acquired compared with the operating profit of the offeree.

For these purposes, the term “assets” will normally mean total assets less current liabilities (other than short term indebtedness).

(b) The figures to be used for these calculations will be:

(i) for market capitalisation of the shares of the offeree, the aggregate market value of all the equity shares of the company at the close of business on the business day immediately preceding the date of the announcement of the proposed purchase or agreement to purchase the assets, or the statement which raises or confirms the possibility that the person is interested in purchasing the assets; and

(ii) for assets and profits, the figures stated in the latest published audited consolidated accounts of the offeree or, where appropriate, a subsequent preliminary statement of annual results or half- yearly or quarterly financial report.

(c) Relative values of more than 75% will normally be regarded as being significant.

5. Entering into talks during a restricted period

Notwithstanding Rule 2.8(c)(ii)(1), the Panel considers that making an approach to the offeree would be restricted by Rule 2.8(c)(i)(6) during the restricted 12 months period under Rule 2.8(c)(i).

Where a person has made a statement to which Rule 2.8 applies and which may be set aside with the agreement of the board of the offeree, the Panel will normally consent to a relaxation of the strict requirements of Rule 2.8(c)(i)(6) in order to enable a potential offeror or its adviser to make a single confidential approach (which may or may not include a discussion of terms) to the board of the offeree during the restricted period in order to ascertain whether the board would be interested in entering into talks with regard to a possible offer. Such a person must consult the Panel in order to obtain such consent.

If a single confidential approach is made but is rejected by the board of the offeree, the person will not normally be permitted by the Panel to make any further approach to the board of the offeree for the remainder of the restricted period under Rule 2.8(c)(i), in accordance with the restriction in Rule 2.8(c)(i)(6). Only the board of the offeree will be permitted to initiate any further contact between the parties during the remainder of the restricted period.

If the board of the offeree agrees to enter into talks with the person subject to the restrictions under Rule 2.8(c)(i), the restriction under Rule 2.8(c)(i)(6) will not apply for the period of time that such talks continue. If either of the parties subsequently decide at any time to end those talks, the person who has made the Rule 2.8 statement will then be bound by the restrictions set out in Rule 2.8(c)(i) (which will prohibit, amongst other things, any further approaches to the board of the offeree) for the remainder of the restricted period.

If, following the Panel having consented to a relaxation of the strict requirements of Rule 2.8(c)(i)(6) in order to enable a potential offeror or its adviser to make a single confidential approach to the board of the offeree, the board of the offeree agrees to enter into discussions with that offeror, the provisions of Rule 2.2(c) will apply in the normal way.

See also Note 6 on Rule 2.6.

NOTES ON RULE 2.9

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 will be binding on the possible offeror in accordance with Rule 2.5(b).

2. Acting in Concert

See note 1 on Rule 2.1 in Part A on the definition of acting in concert.

NOTES ON RULE 2.10

1. Responsibility statements

Announcements and circulars issued under Rule 2 are required to carry a responsibility statement in compliance with Rule 19.2. However~~.~~, the Panel will consider waiving the requirement where the offeree ~~despatches~~ sends an announcement by an offeror, which itself carries an appropriate responsibility statement, without the addition of significant further information, opinions or advice from the offeree board. In any case where all the relevant directors cannot be contacted prior to the issue of a responsibility statement, the Panel should be consulted in advance.

~~*2. Despatch*~~ 2. Distribution of Rule ~~*2.5 announcement by the offeror*~~2.7 announcements

The Panel will consider waiving the obligation under Rule ~~2.6(b~~2.10(b) to ~~despatch~~ send a Rule ~~2.5~~ 2.7 announcement to the shareholders of the offeree if the Panel is satisfied that the relevant offer document will be ~~despatched~~ sent very shortly following the issue of the Rule ~~2.5~~ 2.7 announcement.

3. Rule 26

See Rule 26.

4. Making of announcements and distribution of documentation

See Rule 30 .

NOTES ON RULE ~~2.7~~2.11

~~*1.*~~1. Change in general economic circumstances

The Panel may consent to an offeror not proceeding with its announced offer where there has been a change in general economic, industrial or political circumstances but only where such circumstances are of an exceptional nature and are of material significance to the offeror in the context of the offer.

~~*2.*~~2. When there is no need to ~~*despatch*~~ send an offer to shareholders

For the purposes of Rule ~~2.7(b~~2.11(a)(iii), if another offeror has announced a higher offer, the Panel may permit an earlier offeror to defer ~~despatching~~ sending its offer to shareholders beyond the time specified in Rule ~~30.2(a~~24.1(b), pending ~~despatch~~ publication of the higher offer, and thereupon relieve the earlier offeror of the obligation to ~~despatch~~ send its offer to shareholders.

NOTES ON RULE ~~2.8~~2.12

~~*1. Prior consultation*~~

~~Any person considering issuing such a statement is recommended to consult the Panel in advance.~~

~~*2. Panel consent under Rule 2.8 (b) or (c)*~~

~~Having regard to the extensive circumstances in paragraph (c)(ii) in which a statement can be set aside, the practice of the Panel is to consent to a setting aside in other circumstances in exceptional cases only.~~

~~*3. Media reports*~~

~~When considering the application of this rule, the Panel will take into account not only the statement itself but the manner of any subsequent public reporting of it. Advisers should therefore ensure that directors and officials of companies are warned that they must consider carefully the implications of Rule 2.8, particularly when giving interviews to, or taking part in discussions with, the media. It is very difficult after publication to alter an impression given or a remark attributed to a particular person. Control of any possible abuse lies largely with the person being interviewed.~~

~~In appropriate circumstances, the Panel will require a statement of retraction or clarification.~~

~~NOTES ON RULE 2.10~~

1. Options to subscribe

The classes of relevant securities to be detailed by an offeree in the announcement include, within category (iv) of the definition of relevant securities, rights granted by the offeree to subscribe for new shares which on issue will themselves constitute relevant securities of the offeree. This will apply to subscription options granted under a company's incentive share option plan. The Panel will normally regard options granted under such a plan as belonging to the same class of relevant securities. Where a company has more than one share option plan, the options granted under each plan will normally be regarded as a separate class of relevant securities.

2. Treasury shares

Only relevant securities that are held and in issue outside treasury should be included in the announcement.

NOTE ON RULE ~~2.11~~2.13

Persons required to furnish address for service.

The advisers in respect of which an address for service is to be furnished are the financial advisers, legal advisers, stockbroking advisers and public relations advisers, unless the Panel determines otherwise. If notification of addresses for service is being furnished on behalf of persons so obliged, it is essential that the person making notification confirms to the Panel that it has the written authority of each such person to make the notification on that person's behalf.

In any case where an offeror is a subsidiary, addresses for service should be provided for the ultimate parent company and each of its directors. In any case where one or more persons hold control of an offeror, an address for service should be provided for each such person, and if it is a company, for each of its directors.

NOTES ON RULE 3

NOTES ON RULE 3.1

~~1.~~1. *Management buy-outs and offers by controlling shareholders*

The requirement for competent independent advice is of particular importance in cases where the offer is a management buy-out or similar transaction or is being made by the existing controlling shareholder or group of shareholders. In such cases, it is particularly important that the independence of the adviser is beyond question. Furthermore, the responsibility borne by the adviser is considerable and, for this reason, the independent board of the offeree or potential offeree should appoint an independent adviser as soon as possible after it becomes aware of the possibility that an offer may be made.

2. *Conflicts of interest*

A conflict of interest will exist, for instance, if there are significant cross- shareholdings between an offeror and the offeree, if a director is common to both companies or if a person is a substantial shareholder in both companies.

The Panel will normally consider, in the absence of evidence to the contrary, that it is appropriate for executive directors of the offeree to participate in giving advice to shareholders. However, it is important for such directors to satisfy themselves that they do not have a conflict of interest, and if any director considers that ~~he has~~ they have a conflict of interest, ~~he~~ they should withdraw from the independent board. In cases of uncertainty, the Panel should be consulted.

NOTES ON RULE 3.3

1. *Independence of adviser*

The Rule requires the offeree's adviser to have a sufficient degree of independence from the offeror to ensure that the advice given is properly objective. Accordingly, in certain circumstances it may not be appropriate for a person who has had a recent advisory relationship with an offeror to give advice to the offeree. In such cases the Panel should be consulted. The views of the offeree board will be an important factor.

Where the Panel consents to a fee arrangement contingent upon an offer lapsing or not being made, it will normally be a condition that full details of the relevant arrangement be disclosed in a circular to shareholders, and that appropriate reference to the arrangement be repeated in any announcement or circular which refers to the relevant adviser. In addition, the Panel will normally require that the document which establishes the relevant arrangement be included in the documents ~~displayed~~ to be published on a website under Rule 26.

2. *Investment trusts*

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

3. *Significant interests*

For the purposes of Rule 3.3, the Panel will normally consider a shareholding of 20% or more to be a significant interest.

NOTES ON RULE 4

NOTES ON RULES 4.1 and 4.2

1. Panel to be consulted

The Panel should be consulted prior to any dealings if there is any basis for doubt as to the status under Rule 4.1 or 4.2 of the proposed dealings.

2. Consortium offers and joint offerors

The Panel will normally consider joint offerors or the members of a consortium involved in an offer to be acting in concert. However it is recognised that individual parties in such cases may have grounds to request the consent of the Panel in respect of some dealings (for example, dealings by a connected fund manager). The Panel is prepared to consider such requests on their merits, but no such dealings should be undertaken unless Panel consent has been given.

3. Sales by an offeror of securities of the offeree

The Panel is unlikely to consent to such sales in the case of an offer under Rule 9 or if the proposed sale price is below the value of the offer.

4. Discretionary fund managers and principal traders

Dealings by in securities of the offeree by non-exempt discretionary fund managers or and principal traders which are connected with the offeror , unless they are exempt, may be relevant. (See Rule 7.2.)will be treated in accordance with Rule 7.2.

See also notes 5 and 6 on Rule 7.

Dealings on a non-discretionary execution only basis by stockbrokers on behalf of clients would not normally be subject to Rules 4.1 and 4.2 provided the stockbroker:

(a) acts upon the instruction of the client and neither the stockbroker nor any person associated with the stockbroker provides the client with any advice relevant to the transaction;

(b) acts purely as an agent and takes no strategic position in the relevant stock;

(c) generates no profit from the transaction other than normal commission fees; and

(d) executes the transaction within a maximum of three business days.

5. Dealings between an offeror and connected exempt principal traders.

See Rule 38.2.

6.Insider dealing 6. Market Abuse legislation

Notwithstanding the provisions of Rule 4, a person may be precluded from dealing or communicating price-sensitive information to others by virtue of restrictions contained in Part V of the Companies Act, 1990 or by virtue of the Market Abuse Regulation (Directive 2003/6/ECEU 596/2014) or the European Union (Market Abuse) Regulations 20052016. If the Panel becomes aware of instances to which such restrictions may be relevant, it may inform the Stock Exchange Central Bank of Ireland and/or other authorities.

~~*7. Obligation or other special circumstances*~~

~~If, in connection with a proposed redemption or purchase by an offeree of its own securities, the offeree board considers that an obligation or other special circumstance exists, although a formal contract has not been entered into, the Panel should be consulted and, if appropriate, it will grant its consent to proceed without a shareholders' meeting. (Note 1 on Rule~~

~~21.1 may be relevant.)~~ *NOTE ON RULE 4.3*

Irrevocable commitments

The Panel will expect the financial adviser to the offeror to ensure that all relevant legislative and regulatory requirements are complied with when irrevocable commitments are being sought.

NOTE ON RULE 4.4

Irrevocable commitments and letters of intent

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

NOTES ON RULE 5

NOTES ON RULE 5.1

~~1.~~1. *"Voting securities" and "rights" over voting securities See Notes ~~14~~ 15 and ~~17~~ 18 on Rule 2.1 of Part A.*

Where, in a securities borrowing and lending transaction or a sale and repurchase (or "repo") transaction relating to voting securities of a relevant company, the "borrower" or "buyer" becomes entitled for the time being to exercise, or to control the exercise, of the voting rights conferred by the securities concerned, he or she will normally be deemed for the purposes of Rule 5.1 to hold securities conferring voting rights in that company.

During the period between the entry into the agreement for such a transaction and the actual transfer to the "borrower" or "buyer" of the securities concerned, he or she may be deemed for the purposes of Rule 5.1 to hold rights over those securities.

2. *Aggregation of securities*

Note that the 30% and 50% thresholds referred to in Rule 5.1 relate not only to voting securities but also to voting securities over which rights are held, notwithstanding that the holder of such rights may not control the votes attributable to the underlying securities. Hence an aggregate of 30% or more for the purposes of Rule 5.1 might be held by a person or persons acting in concert who control less than 30% of the voting rights in the company and therefore would not be subject to an obligation under Rule 9.

~~3.~~3. *When more than 50% is held*

The restrictions in Rule 5.1(a) apply to a group of persons acting in concert (unless they are regarded as a single holder according to Rule 5.5) which holds more than 50% of the voting rights, although the Panel will consider granting derogations in appropriate circumstances.

~~4.~~4. *Options over existing shares*

The acquisition (except under an established share option scheme) of options over existing shares is restricted by Rule 5.1(a). However, the acquisition of shares upon the exercise of such options is not so restricted although it may entail an obligation to make an offer under Rule 9.

~~5.~~5. *Applicability of the Substantial Acquisition Rules*

Note that the Substantial Acquisition Rules impose restrictions on certain acquisitions of securities resulting in holdings representing 15% or more but less than 30% of the voting rights of a company.

6. Irrevocable Commitments

As rights over shares, the restrictions in Rule 5.1(a) apply to irrevocable commitments to accept an offer. An irrevocable commitment to vote at a general meeting or scheme meeting in favour of a resolution to approve or implement the offer or scheme does not constitute a right over shares.

7. "Whitewashes"

This Rule does not prohibit a person from obtaining an interest in shares carrying 30% or more of the voting rights in accordance with Note 1 of the Notes on Dispensations from Rule 9.

8. Discretionary fund managers and principal traders

Dealings by non-exempt discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 7.2.

NOTES ON RULE 5.2

1. *Rule 9*

An acquisition of securities permitted by Rule 5.2 will normally result in an obligation to make an offer under Rule 9, in which case an immediate announcement of such an offer must be made. Where the acquisition is of rights over securities, the provisions of Note 8 on Rule 9.1 may be relevant and the Panel should be consulted in cases of doubt.

~~2.~~2. *After an offer lapses*

After an offer has lapsed, the restrictions in Rule 5.1 and the Substantial Acquisition Rules will once again apply to the former offeror.

3. *Gifts and inheritances*

A person who acquires voting securities by way of bona fide gift or inheritance which takes that person's holding of voting securities to 30% or more should consult the Panel. Where a person acquires voting securities by way of bona fide gift or inheritance which takes that person's holding of voting securities to 30% or more, he may not be required to make an offer under Rule 9 if sufficient shares are sold within a limited period to persons unconnected with that person or the holding is approved by a vote of independent shareholders as soon as possible. The person acquiring control by way of bona fide gift or inheritance must consult the Panel as to his ability to exercise the voting rights attaching to the shares at any time before sufficient shares are sold or approval of independent shareholders is obtained. The Panel should be consulted in all cases.

NOTE ON RULE 5.5

Single holder of securities

For the purposes of Rule 5.5, the Panel will normally consent to the inclusion in family holdings of securities held by a company wholly owned and controlled by qualifying family members, or by trustees of a trust whose beneficiaries are all qualifying family members. The Panel should be consulted in any such case.

NOTES ON RULE 6

1. Application of Rule 6

Rule 6 applies to the acquisition of securities of the offeree of a class which is the subject of the offer.

Rule 6 also applies to acquisitions of securities convertible into, warrants in respect of, or options or other rights to subscribe for or acquire, existing or new securities of the offeree of a class which is the subject of the offer. Acquisitions of such securities convertible into, warrants in respect of, or options or other rights to subscribe for, existing or new securities will normally only be relevant to Rule 6 if they are converted or exercised (as applicable). Such acquisitions will then be treated as if they were acquisitions of the underlying securities at a price calculated by reference to the acquisition price and the relevant conversion or exercise terms. In any case of doubt, the Panel should be consulted.

~~1.~~2. Adjusted terms

The Panel's discretion to agree adjusted terms pursuant to Rule 6.1 will be exercised only in exceptional circumstances. Factors which the Panel may take into account when considering an application for adjusted terms include:

~~(a)~~(a) whether the relevant purchase was made on terms then prevailing in the market;

~~(b)~~(b) changes in the market price of the shares since the relevant purchase;

~~(c)~~(c) the size and timing of the relevant purchase;

~~(d)~~(d) the attitude of the offeree board;

~~(e)~~(e) whether shares have been purchased at high prices from directors or other persons closely connected with the offeror or the offeree; and

~~(f)~~(f) whether a competing offer has been announced for the offeree.

~~2.~~3. Purchases prior to the three month period

In considering whether to exercise the discretion given to it in Rule 6.1(b), the Panel will take particular account of whether the vendors are directors of, or other persons closely connected with, the offeror or the offeree.

4. Value of the Consideration

~~*3. No less favourable terms*~~

If, during the period ending when the market closes on the first business day after the announcement of a firm intention to make the offer, the market value of securities offered as consideration by the offeror falls below the highest relevant purchase price, the Panel will be concerned to ensure, for the purposes of Rule 6.1, that the offeror acted with all reasonable care in determining the value of the consideration.

If there is a restricted market in the securities of an offeror, or if the amount of securities to be issued of a class already admitted to trading is large in relation to the amount already issued, the Panel may require justification of prices used to determine the value of the offer.

~~4.~~5. 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).

6. Offer period

See the definition of "offer period", in relation to the commencement date of an offer period for the purposes of Rule 6.1 where:

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

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

7. 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.

8. Dividends

If acceptors of an offer are to be entitled under the offer to receive and retain a dividend which has been announced by the offeree, purchases in the market or otherwise after the "ex dividend" date by an offeror or any person acting in concert with it may only be made at prices up to the amount of the offer value without incurring an obligation under Rule 6.1.

If acceptors of an offer are not entitled under the offer to receive and retain a dividend which has been announced by the offeree, purchases in the market or otherwise after the "ex dividend" date by the offeror or any person acting in concert with it may only be made at prices up to the offer value less the amount of the dividend without necessitating any revision of the offer.

NOTES ON RULE 7

~~1.~~1. *Partial offers and "whitewashes"*

Purchases of securities of the offeree by an offeror or any person acting in concert with it may result in the Panel refusing to exercise its discretion to permit a partial offer (see Rule 36) or to grant a derogation, in accordance with the procedures set out in the Whitewash Guidance Note (see the Notes on Rule 9), from the obligation to make an offer under Rule 9.

2. *Qualifications*

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

~~(b)~~(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)~~(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 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).

4. Formal Sale Process

The requirement in Rule 7.1 to make an announcement applies to any potential offeror (whether named or not) which is a participant in a formal sale process to which Rule 7.1(b)(i) or (ii) applies.

5. Dealings by principal traders

After a principal trader is presumed to be acting in concert by virtue of Rule 7.2(a), it may stand down from its dealing activities. In such circumstances, with the prior consent of the Panel, the principal trader may sell securities of the offeree or offeror, or may acquire such securities with a view to reducing any short position, without such dealings having consequences pursuant to Rules 4.2, 4.4, 5, 6, 9, and 11 notwithstanding the usual application of the presumptions of acting in concert and Rule 7.2(a). Any such dealings must take place within a time period agreed in advance by the Panel and be disclosed in accordance with Rule 8.

6. Dealings by discretionary fund managers

With the prior consent of the Panel, a discretionary fund manager connected with either the offeree or an offeror or potential offeror will be permitted to acquire securities of the offeree, with a view to reducing any short position, without such acquisitions having consequences pursuant to Rules 4.4(a), 5, 6, 9 and 11, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a). Any such dealings must take place within a time period agreed in advance by the Panel and be disclosed in accordance with Rule 8.

After the commencement of the offer period, with the prior consent of the Panel, a discretionary fund manager connected with an offeror will be permitted to sell securities of the offeree without such sales having consequences pursuant to Rule 4.2, notwithstanding the usual application of the presumptions of acting in concert and Rule 7.2(a). Any such dealings must take place within a time period agreed in advance by the Panel and be disclosed in accordance with Rule 8.

NOTES ON RULE 8

~~1.~~1. *Consultation with the Panel*

In any case of doubt as to the application of Rule 8, the Panel should be consulted.

2. *Relevant securities*

See the definition of "relevant securities" in Rule 2.1 of Part A and Note ~~12~~ 13 on that rule.

3. Offeree and offeror co-operation

The offeree should assist the Panel in identifying persons who are interested in 1% or more of any class of relevant securities of the offeree and, promptly after the commencement of an offer period, should provide the Panel with details of all persons who are reasonably considered to be so interested.

Except in cases where it has been announced that any offer is, or is likely to be, in cash, the offeror should assist the Panel in identifying persons who are interested in 1% or more of any class of relevant securities of the offeror and, promptly after the announcement that first identifies the offeror as such, should provide the Panel with details of all persons who are reasonably considered to be so interested.

~~3.~~4. *Interests in how many relevant securities? – the calculation*

The calculation of the number of relevant securities of a particular class in which a person is interested is important for the purposes of disclosure under Rule 8 and other rules such as Rules ~~2.5~~2.7, 17.1, ~~24.3~~ 24.4 and ~~25.3~~ 25.4 and has special importance under Rule 8.3 (see Note ~~4~~ 5 below).

The number of relevant securities of a particular class in which a person is deemed to be interested is normally the gross number arrived at by aggregating the number of such securities falling under each of sub- paragraphs (1) to (6) in paragraph (b)(i) (long position) of Rule ~~2.6~~ 2.5 of Part A. If a person's interest in relevant securities falls within more than one of those subparagraphs, he or she will be deemed to be interested in the highest number determined under the relevant paragraphs.

5. *Rule 8.3*

In determining whether a person has a disclosure requirement under Rule 8.3, his or her interests must be aggregated by class of relevant security. If during an offer period he or she is interested in 1% or more of any class of relevant securities of the offeree or (in the case of a securities exchange offer) of the offeror or as a result of a transaction will become interested in 1% or more of any such class, he or she will be obliged to disclose all his or her dealings during the offer period in any relevant securities of ~~that company~~either the offeror or the offeree.

By way of example, a person holding 0.5% of the ordinary shares and 0.3% of the convertible bonds of an offeree and who enters into a long contract for differences referenced to 0.4% of the ordinary shares would not have to disclose that dealing as he or she would have a long position in respect of only 0.9% of one class of relevant security, i.e. ordinary shares, and 0.3% of another class of relevant security, i.e. convertible bonds. If that person then enters into a call option over a further 0.5% of the ordinary shares, this would be disclosable as he or she would then have a long position in respect of 1.4% of the ordinary share class at that time. The holding of convertible bonds would then also have to be disclosed in accordance with Rule 8.6 ~~of Part B~~. A person holding 0.9% of a convertible bond of an offeree and who then acquires 0.5% of another class of convertible bond of that offeree will not have to disclose the dealing as he or she would not have a long position in respect of 1% or more of any one class of relevant security.

6. *Discretionary fund managers*

The principle normally applied by the Panel is that where the investment decision is made by a discretionary fund manager, it and not the person on whose behalf the fund is managed will be treated as interested in, and having dealt in, the relevant securities concerned. For that reason, Rule ~~8.3(d~~8.3(e) requires a discretionary fund manager to aggregate the investment accounts which it manages for the purpose of determining whether it has an obligation to disclose. The beneficial owner would not normally, therefore, be concerned with disclosure to the extent that his or her investment is managed on a discretionary basis. However , where any of the funds managed on behalf of a beneficial owner are not managed by the fund manager originally contracted to do so but are managed by a different independent third party who has discretion regarding dealing, voting and offer acceptance decisions, the fund manager to whom the management of the funds has been sub-contracted (and not the originally contracted fund manager) is required to aggregate those funds and to comply with the relevant disclosure obligations accordingly.

This approach assumes that the discretionary fund manager does not take instructions from the beneficial owner on the dealings in question and that fund management arrangements are not established or used to avoid disclosure.

7. *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).

8. *Rule ~~8.3(e~~8.3(f): client-serving capacity of recognised intermediary*

The acquisition of relevant securities by a financial institution for the purposes of hedging its position in relation to a CFD contract which it has written for, and at the request of, a client is regarded as a client-serving activity.

For the avoidance of doubt, proprietary trading is not regarded as a client- serving activity.

9. *Unquoted securities*

The requirements to disclose dealings apply also to dealings in unquoted relevant securities.

~~*9. Method of disclosure*~~
~~In the case of public disclosure, separate disclosure to the press is not required as the Regulatory Information Service will publish the disclosure. Where relevant securities of the offeree are authorised to be traded on one or more markets specified in regulations made by the Minister under section 2(c) of the Act, public disclosure under Rule 8 should be made to the appropriate authority in each such market.~~

10. *Disclosure of identity*

For the purpose of disclosing identity under Rule 8.6, the person who owns or controls the relevant securities must be specified, in addition to the person dealing. The naming of nominees or vehicle companies is insufficient. If the owner or controller of the securities is a trust , the identity of the trustee(s), the settlor, the protector and the beneficiaries of the trust must be disclosed. When the beneficiaries are a connected group, for example, members of a family, a description of the group will normally be sufficient. The Panel may require additional information to be disclosed when it appears to be appropriate, for example, to identify other persons who have an interest in the securities in question. However, in the case of disclosure of dealings by fund managers on behalf of discretionary clients, the clients need not be named.

~~*11.*~~*11.* *Separate but related dealings*

For the avoidance of doubt, when a person transacts two or more separate but related dealings executed at or around the same time (for example, the entering into of a derivative referenced to relevant securities and the acquisition of such securities for the purposes of hedging), the disclosure must include the required information in relation to each such dealing so executed.

~~*12.*~~*12.* *Disclosure by offeror in case of possible offer*

~~If an offeror has been the subject of an announcement that talks are taking place (whether or not the offeror has been named) or has announced that it is considering making an offer, the offeror and all persons acting in concert with it must disclose all dealings in relevant securities under Rule~~

~~8.1 and such disclosures must include the identity of the offeror as required by Rule 8.6.~~

~~*13. Disclosure under other legislation*~~

~~In addition to the requirements to disclose under Rule 8, the requirements of Part IV of the Companies Act, 1990 (unless disapplied), Regulation 12 of the Market Abuse (Directive 2003/6/EC) Regulations 2005 and Part V of the Transparency (Directive 2004/109/EC) Regulations 2007 as to disclosure of interests and dealings in shares may be relevant.~~

If a potential offeror has not been publicly identified as such, it will not need to make an opening position disclosure under Rule 8.1(a)(i) or (ii) that would identify it as a potential offeror until an announcement is otherwise made that identifies it as an offeror. However, before that time, the potential offeror and persons acting in concert with it will need to make opening position disclosures in accordance with Rule 8.3(a), if applicable. If members of an offer consortium that has not been identified as such might be subject to Rule 8.3(d), the Panel should be consulted. In such cases, the consortium members will not normally be required to make a joint opening position disclosure which could identify them as such, although any member who is interested in 1% or more of a class of relevant securities of the offeree will be required to make an individual opening position disclosure.

If a potential offeror has been referred to in an announcement by the offeree but has not been publicly identified as such, or if it is a participant in a formal sale process announced by the offeree (regardless of whether it was a participant at the time of the announcement), the potential offeror and persons acting in concert with it must disclose any dealings in relevant securities of the offeree after the time of that announcement (or, if later, after the time at which it becomes a participant in the formal sale process) in accordance with Rule 8.1(c). This will identify the offeror, so that, at the same time as or before any such dealing disclosure, the offeror must also make an announcement that it is considering making an offer, or that it is a participant in the formal sale process (see also Rule 7.1(b) and Note 4 on Rule 7 for when an immediate announcement will be required). The announcement must include a summary of the provisions of Rule 8.

After the announcement that first identifies a potential offeror as such, it will be required to make an opening position disclosure in accordance with Rule 8.1(a)(i). Such disclosure must include details in relation to the relevant securities of the offeree or any securities exchange offeror, even if certain details have previously been disclosed by the potential offeror or persons acting in concert with it in accordance with Rule 8.3.

13. Intermediaries

Intermediaries must co-operate with the Panel in its dealings enquiries. Therefore, those who deal in relevant securities should appreciate that stockbrokers and other intermediaries will supply the Panel with relevant information as to those dealings, including identities of clients, as part of that co-operation.

14. Opening position disclosures

(i) A person acting in concert with the offeror or the offeree is not required to make an opening position disclosure as details of its positions will be included in the opening position disclosure of the offeror or the offeree, as appropriate.

(ii) When an opening position disclosure is made, the relevant details must be disclosed in relation to the relevant securities of the offeree and the offeror at the same time. No disclosure is required if there are no positions to disclose.

(iii) Where a person is required to make an opening position disclosure and, before the deadline for doing so, there is a subsequent announcement that first identifies an offeror, the opening position disclosure does not need to disclose details in respect of the relevant securities of that subsequently announced offeror. A separate opening position disclosure must then be made in respect of the relevant securities of that offeror by the deadline established by reference to the subsequent announcement.

(iv) 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 if full details of such positions have previously been publicly disclosed under Rule 8 and such positions have not changed.

(v) Where a person is disclosing details in respect of more than one party to the offer at the same time, they must use a separate disclosure form in respect of each such party.

(vi) Following an announcement by a cash offeror that its offer is being revised to become (or that its possible offer may be) a securities exchange offer, opening position disclosures and dealing disclosures will be required in the same way as if the announcement had been the first to identify the offeror as a securities exchange offeror.

15. Dealing disclosures

1. When a dealing disclosure is made the relevant details must be disclosed in relation to the relevant securities of the offeree and the offeror at the same time. However, no disclosure is required in respect of the relevant securities of a party if there are no dealings or positions to disclose or if full details of positions in each class of that party's relevant securities have previously been publicly disclosed under Rule 8 and have not changed.

2. Where a person is disclosing details in respect of more than one party to the offer at the same time, they must use a separate disclosure form in respect of each such party.

16. Amendments

If details included in a disclosure under Rule 8 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.

17. Irrevocable Commitments and Letters of Intent

See Rule 2.7(b)(iv) and Rule 2.9.

NOTES ON RULE 9

NOTES ON RULE 9.1 – ACTING IN CONCERT

Without prejudice to the general application of the definitions, the following Notes illustrate how, in the context of Rule 9, the definitions of "acting in concert" and, in relation to takeover bids, "persons acting in concert" (together referred to in the Notes on Rule 9 as "acting in concert") are normally interpreted by the Panel (see also Note 1 on Rule 2.1 of Part A). As stated in the footnote to Rule 9.1(b), that Rule does not apply to Shared Jurisdiction Companies.

~~1.~~1. *Persons coming together to act in concert*

Acting in concert requires the co-operation of two or more parties. When a party has acquired securities independently of other holders or potential holders of securities but subsequently comes together with other holders to co-operate as a group to obtain or to consolidate control of a relevant company and their existing holdings of securities confer 30% or more of the voting rights in that company, the Panel will not normally require a general offer to be made under this Rule by reason only of that earlier acquisition. Such parties having once come together, however, the provisions of the Rule will apply so that:

~~(a)~~(a) *if the combined holdings confer less than 30% of the voting rights in that company, an obligation to make an offer will arise if any member of that group acquires further securities so that the voting rights conferred by their total holdings reach 30% or more, or*

~~(b)~~(b) *if the combined holdings confer 30% or more of the voting rights in that company, no member of that group may, in any 12 month period, acquire additional securities which would result in an increase of more than 0.05% in the percentage of the voting rights in that company held by the group without incurring an obligation to make an offer.*

In any case where a relevant company proposes to issue securities such that a person acquiring new shares, together with any persons acting in concert with that person, would thereby acquire or, where relevant, consolidate control of the company, the Panel should be consulted to determine whether any obligations under Rule 9 would arise as a consequence of such issue.

See also Note 4 below.

2. *Shareholders voting together*

The action of shareholders voting together on particular resolutions may not of itself lead to an offer obligation but the Panel may, in certain circumstances, hold that such joint action indicates that there is a group acting in concert with the result that purchases by any member of the group could give rise to such an obligation.

The Panel will, when reviewing shareholder collective action in this context, have regard to any statement by the European Securities and Markets Authority on shareholder co-operation and acting in concert with respect to the EU Takeover Bids Directive.

~~3.~~3. *Directors of a company*

Directors of an offeree will be presumed to be acting in concert during an offer period~~.~~, or when they have reason to believe that a bona fide offer may be made in the near future, or whilst the relevant company is in the course of redeeming or purchasing its own voting securities. The normal provisions of Rule 9.1 would apply in these circumstances. At other times, directors of a company are not presumed to be acting in concert in relation to control of the company of which they are directors. Subject to the constraints imposed by the Rules, and in particular to the normal application of Rule 9 to their holdings, directors are, so far as the Rules are concerned, free to deal in the securities of their company. However, the Panel will examine situations closely should the actions of the directors suggest that they may be acting in concert.

If shareholders of an offeree who have indicated their support for the offeree's directors against an offer thereafter buy securities to frustrate the offer, the Panel would consider their position in relation to the directors. The directors of companies defending against an offer, their supporters and their advisers should consult the Panel before acquiring any securities or voting rights which might lead to the incurring of an obligation under this Rule.

See also Rule 3.3(b)(vi) of Part A, Note 1(d) on Rule 2.1 of Part A and Rule 37.

~~4.~~4. *Acquisition of securities by members of a group acting in concert*

~~Whilst the~~ The Panel ~~normally treats~~ may treat a group of persons acting in concert as being the equivalent of a single person. Where this is the case, and given that the membership of such groups may change at any time~~. This being the case~~, there will be circumstances in which the acquisition of securities by one member of a group acting in concert from another member will result in the acquirer of the securities having an obligation to make an offer. Regardless of whether securities acquired by a member of a group acting in concert come from a fellow- member or from a non-member of the

group, if the acquiring member comes to hold 30% or more of the voting rights or, where he already holds at least 30% but not more than 49.95%, increases his own percentage of the voting rights by more than 0.05% in any period of 12 months, he will incur an offer obligation unless the Panel consents otherwise. If a waiver of the obligation is sought where securities are acquired from a fellow member of the group, factors which the Panel may take into account include:

~~(a)~~(a) whether the leader of the group or the member with the largest individual holding has changed and whether the balance between the holdings in the group has changed significantly;

~~(b)~~(b) the price paid for the securities acquired; and

~~(c)~~(c) the relationship between the persons acting in concert and how long they have been acting in concert.

For the purpose of calculating under Rule 9.4 the highest price paid, the prices paid for shares transferred between members of a group acting in concert may be relevant where, for example, all shares held within a group are transferred to that member making the offer or where prices paid between members are materially above the market price.

NOTES ON RULE 9.1 – OTHER GENERAL CONSIDERATIONS

~~5.~~5. Vendor of part only of a holding

Holders of securities sometimes wish to sell part only of their holdings or a purchaser may be prepared to purchase part only of a holding. This arises particularly where a purchaser wishes to acquire just under 30%, thereby avoiding an obligation under Rule 9 to make a general offer. The Panel will be concerned to see whether in such circumstances the vendor is acting in concert with the purchaser in such a way as effectively to allow the purchaser to exercise a significant degree of control over the retained holding, in which case a general offer would normally be required. A judgement on whether such significant degree of control exists will obviously depend on the circumstances of each individual case. In reaching its decision, the Panel may have regard, inter alia, to the points set out below:

(a) there might be less likelihood of a significant degree of control over the retained securities if the vendor was not an "insider";

(b) the payment of a very high price for the securities would tend to suggest that control over the entire holding was being secured;

(c) if the parties negotiate options over the retained securities, it may be more difficult for them to satisfy the Panel that a significant degree of control is absent. On the other hand, where the retained securities are in themselves a significant part of the company's capital (or even in certain circumstances represent a significant sum of money in absolute terms), a correspondingly greater element of independence may be presumed; and

(d) it would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas as regards the way the company is to be directed are reasonably compatible with his or her own ideas. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, divorced from any other evidence of a significant degree of control over the retained securities, may not necessarily lead the Panel to conclude that a general offer should be made.

6. Placing

When a purchaser is to acquire securities which will result in his or her holding securities conferring 30% or more of the voting rights in the relevant company, the Panel may consider waiving the requirements of Rule 9.1 if firm arrangements are made, prior to the acquisition, for the placing of sufficient securities to reduce the voting rights exercisable by the purchaser to below 30% or, in certain exceptional circumstances, if an undertaking is given to make such a placing within a very short period after the acquisition. In all such cases, the Panel should be consulted in advance. The Panel will be concerned to ensure, amongst other things, that none of the placees is acting in concert with the purchaser; for example, an obligation under Rule 9.1 will not be avoided by placing the securities with a number of persons having a common link, such as the discretionary clients of a fund manager which would be connected with the purchaser if the purchaser were an offeror (unless, in such circumstances, the fund manager would have exempt status).

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~~ the principal 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.

~~8.~~8. Convertible securities, warrants and options

The acquisition of convertible securities, warrants or options over new or existing shares (unless such securities themselves, as distinct from the shares to which they relate, confer voting rights) does not give rise to an obligation under Rule 9 to make a general offer but the exercise of any such conversion or subscription rights or options will be considered to be an acquisition of ~~securities~~ shares for the purposes of the Rule.

The taking of an option over existing shares will, however, be regarded as constituting the acquisition of securities giving rise to such an obligation where the relationship and arrangements between the two parties concerned are such that control of the voting rights conferred by those shares has passed to the grantee of the option.

The Panel may subject the grant of a waiver of an obligation to make an offer arising from the exercise of conversion or subscription rights over new shares to conditions, including those set out in the Whitewash Guidance Note below.

Any holder of conversion or subscription rights who intends to exercise such rights and thereby to become the holder of 30% or more of the voting rights in a relevant company should consult the Panel before doing so in order to determine whether an offer obligation would arise under Rule 9 and if so at what price (see also Rule 9.4(d)(ii)).

Where there are conversion or subscription rights currently capable of being exercised, this Rule is invoked at a level of 30% of the existing voting rights. Where ~~they~~ such conversion or subscription rights are capable of being exercised during an offer period, Rules 10.1 and 10.2 will be relevant.

9. Euroclear Bank, DTC and other settlement systems

The acquisition of interests in shares held through the Euroclear Bank, DTC or other settlement systems is an acquisition of securities for the purpose of Rule 9. See also Note 16 on Rule 2.1 in Part A.

~~9.~~10. The reduction or dilution of a holding of securities

If a holder of securities or a group of holders of securities acting in concert holding securities conferring 30% or more of the voting rights sells securities, the provisions of Rule 9.1 apply to the reduced holding so that an offer obligation will arise if the reduced holding confers 30% or more of the voting rights and this is increased by more than 0.05% within any period of 12 months or, following a reduction below 30%, is increased to 30% or more. In this context, sales of securities may not be netted off against purchases except with the consent of the Panel.

The percentage of voting rights conferred by a holding in a company may be diluted following the issue by that company of new securities and the Panel may regard such dilution in the same light as a reduction described above so that the percentage of voting rights held, if it has been reduced below 30%, may not be restored to 30% or more without incurring an obligation to make a general offer or, if not reduced below 30%, may not be increased by more than 0.05% within any period of 12 months without incurring that obligation. The Panel may, however, consider waiving the requirements of Rule 9.1 subject to conditions of the kind referred to below in the Whitewash Guidance Note, whereby shareholders approve the restoration of a diluted holding by purchases from those to whom new securities are issued.

~~10.~~11. 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.)

12. Securities borrowing/lending and sale/repurchase transactions

Where, in a securities borrowing and lending transaction or a sale and repurchase (or "repo") transaction relating to voting securities of a relevant company, the "borrower" or "buyer" becomes entitled for the time being to exercise, or to control the exercise, of the voting rights conferred by the securities concerned, he or she will normally be deemed to have acquired voting securities of that company for the purposes of Rule 9.1.

13. Bank Recovery and Resolution

Rule 9.1 will not apply in the case of use of resolution tools, powers and mechanism provided for in Part 4 of the EU (Bank Recovery and Resolution) Regulations 2015 (S.I.. No. 289/2015).

14. Treasury shares

When an obligation to make an offer is incurred under Rule 9, it is not necessary for the offer to extend to shares in the offeree held in treasury.

NOTES ON RULE 9.2

~~1.~~1. When more than 50% is held

An offer made under Rule 9 must be unconditional (except as provided in Rule 12) when the offeror and persons acting in concert with it hold securities conferring more than 50% of the voting rights before the offer is made.

2. Acceptance condition

Rules 10.2 to 10.7 also apply to offers under Rule 9.

~~3.~~3. *When derogations may be granted*

The Panel may consider a request for a derogation under Rule 9.2(b) in certain circumstances, such as:

~~(a)~~(a) *when the necessary cash consideration is to be provided, wholly or in part, by an underwritten cash alternative offer or other issue of securities which is conditional on (i) the obtaining of a quotation for new securities or (ii) the passing of any resolution necessary to create or allot the new securities and/or to allot the new securities on a non-pre-emptive basis (if relevant). In such circumstances, the Panel may direct that both the announcement of the offer and the offer document include statements to the effect that if the acceptance condition is satisfied but ~~the quotation condition~~ either of the aforementioned conditions is not satisfied within the time required by Rule 31.7, and as a result the offer lapses~~:~~, the offeror will immediately make a new cash offer in compliance with Rule 9 at the price required by Rule 9.4 (or, if greater, at the cash price offered under the lapsed offer)~~; and~~.*

~~(ii) until despatch of the offer document in respect of that new offer, the offeror and persons acting in concert with it will not exercise such number of their voting rights in the offeree (the "non-exercise rights")~~

~~that the remainder of their voting rights will represent in the aggregate not more than 29.9% of the total voting rights, exclusive of the non-exercise rights, in the relevant company.~~

As an alternative to implementing the aforementioned procedure ~~described in sub-paragraphs (i) and (ii)~~, or prior to implementing it, the Panel may direct the offeror to extend the offer (as contemplated in Rule 31.7(b)) for a further period to give time within which the ~~quotation condition~~ aforementioned conditions may be satisfied. See also Rule 9.6.

If a derogation is given, the offeror must endeavour to ~~obtain a quotation for the new shares~~ fulfil all the other conditions with all due diligence; or

~~(b)~~(b) *when any governmental or regulatory clearance (other than one referred to in Rule 12) is required. In such circumstances the Panel may direct that if the relevant condition is not satisfied, (i) the offeror and any persons acting in concert with it or any of them to reduce their holdings of securities of the offeree so that the aggregate percentage of the voting rights in the offeree conferred by their holdings is reduced to below 30%, or to its original percentage level before the obligation to make an offer was incurred if that was 30% or more; and (ii) until then, neither the offeror or any persons acting in concert with it or any of them may exercise the voting rights conferred by any securities held in that company.*

NOTE ON RULE 9.4

Offer period

See definition of "offer period", in relation to the commencement date of an offer period for the purposes of Rule 9.4 where an offer has lapsed pursuant to Rule 12(b)(i).

NOTE ON RULE 9.7

Triggering Rule 9 during an offer period

If funding the cash consideration is dependent upon an issue of securities, Note 3 on Rule 9.2 will be relevant.

See also Note 2 on Rule 32.1

NOTES ON POSSIBLE WAIVERS OF AND DEROGATIONS FROM RULE 9

~~1.~~1. Vote of independent shareholders on the issue of new securities ("whitewash")

When the issue of new securities as consideration for an acquisition or a cash subscription would otherwise result in an obligation to make a general offer under Rule 9, the Panel may in certain circumstances waive the obligation if there is an independent vote at a shareholders' meeting. The requirement for a general offer may also be waived, if there has been a vote of independent shareholders, in cases involving the underwriting of an issue of shares. If an underwriter incurs an obligation under Rule 9 unexpectedly, for example, as a result of an inability to sub-underwrite all or part of his liability, the Panel should be consulted immediately.

See Note 1 on Rule 9.1 and the Whitewash Guidance Note below.

~~2.~~2. Enforcement of security for a loan

Where a holding of securities of a relevant company is charged as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make a general offer under Rule 9, the Panel will not normally require an offer if sufficient shares are sold within a limited period to persons unconnected with the lender. The lender should consult the Panel as to its ability to exercise the voting rights attaching to its shares at any time before sufficient shares are sold, or if the holding in excess of 29.9% is likely to be temporary. In any case where arrangements are to be made involving a transfer of voting rights to the lender, but which do not amount to enforcement of the security, the Panel will wish to be convinced that such arrangements are necessary to preserve the lender's security and that the security was not given at a time when the lender had reason to believe that enforcement was likely. If, following enforcement, a lender wishes to sell all or part of his or her holding, the provisions of Rule 9.1 apply to the purchaser. Although a receiver or liquidator of a company may not be required to make an offer when he or she is appointed to a company which holds securities conferring 30% or more of the voting rights of a relevant company, the provisions of Rule 9 apply to a purchaser from such a person.

3. Rescue operations

There are occasions when a relevant company is in such a serious financial position that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities to the rescuer or the acquisition of existing securities by the rescuer without approval by a vote of independent shareholders and consequently falls within the provisions of Rule 9 and would normally require a general offer. The Panel may, however, consider waiving the requirements of Rule 9 in such circumstances provided that either:

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

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

Where neither the approval of independent shareholders nor any other form of protection can be provided, a general offer under this Rule will be required. In such circumstances, however, the Panel may consider an adjustment of the highest price, pursuant to Rule 9.4(f).

A waiver of the requirements of Rule 9.1 may not be granted in a case where a major shareholder in a relevant company rather than that company itself is in need of rescue. The situation of that shareholder may have little relevance to the position of other shareholders and, therefore, the purchaser from such major shareholder must expect to be obliged to extend an offer under Rule 9 to all other shareholders.

4. Inadvertent mistake

If, due to an inadvertent mistake, a person incurs an obligation to make an offer under Rule 9, the Panel may waive the obligation to make an offer if sufficient securities are sold within a limited period to persons unconnected with him. Any such person should consult the Panel as to his ability to exercise the voting rights attaching to his shares at any time before sufficient shares are sold or if the holding in excess of 29.9% is likely to be temporary.

~~5.~~5. Securities conferring 50% or more of the voting rights

It would be a factor which the Panel might take into account in considering whether to waive the requirement for a general offer under Rule 9 if:

~~(a)~~(a) holders of securities conferring 50% or more of the voting rights stated in writing that they would not accept such an offer; or

~~(b)~~(b) securities conferring 50% ~~of~~ or more of the voting rights were already held by one other person~~.~~ ; or

(c) in the case of an issue of new securities, independent shareholders holding securities conferring 50% or more of the voting rights of the company which would be capable of being cast on a "whitewash" resolution (see Note 1) confirm in writing that they approve the proposed waiver and would vote in favour of any resolution to that effect at a general meeting.

~~6.~~6. Enfranchisement of non-voting shares

If a holder of non-voting shares becomes upon enfranchisement of those shares a holder of 30% or more of the voting rights of a relevant company, the Panel may consider waiving the obligation to make an offer under Rule 9, unless the shares have been purchased at a time when the purchaser had reason to believe that enfranchisement would take place.

~~7.~~7. Transfer of existing securities

In exceptional circumstances, the Panel may consider waiving the requirement for a general offer where the approval of independent shareholders to the transfer of existing securities from one shareholder to another is obtained.

8. Gifts and inheritances

Where a person acquires voting securities by way of bona fide gift or inheritance which takes that person's holding of voting securities to 30% or more, he may not be required to make an offer under Rule 9 if sufficient shares are sold within a limited period to persons unconnected with that person or the holding is approved by a vote of independent shareholders as soon as possible. The person acquiring control by way of bona fide gift or inheritance must consult the Panel as to his ability to exercise the voting rights attaching to the shares at any time before sufficient shares are sold or approval of independent shareholders is obtained. The Panel should be consulted in all cases.

See Note 3 on Rule 5.2.

WHITEWASH GUIDANCE NOTE

Note on the waiver by the Panel of the obligation to make a general offer under Rule 9 which would otherwise arise where a person or group of persons acquire control of a relevant company as a result of the issue of new securities as consideration for an acquisition or a cash injection or the fulfilment of obligations under an agreement to underwrite the issue of new securities. As stated in the footnote to Rule 9.1(b), that Rule does not apply to Shared Jurisdiction Companies.

1. INTRODUCTION

~~(a)~~(a) This Note is intended merely for the guidance of practitioners as to the manner in which any such waiver by the Panel in the context of Rule 9 pursuant to section 8(7) of the Act will normally be granted and as to the general conditions to which any such waiver will normally be subject. In no way should this Note be interpreted as prescribing the circumstances in which the Panel's discretion under section 8(7) of the Act will or may be exercised. The Panel emphasises that nothing in this Note is intended in any way to restrict or fetter the manner in which these discretionary powers are exercised.

~~(b)~~(b) Because the potential holders of the new securities to be issued as a consequence of the transaction giving rise to the whitewash procedure will acquire control of the company which proposes to issue the new securities, those persons have the character of an offeror and the company concerned has the character of an offeree. The terms of this Note reflect this position and the application of relevant Rules should be construed accordingly.

(c) Rules 19~~,~~ 20, 24.15 and ~~20,~~ 30 where relevant, apply to information and opinions given in connection with a transaction which is the subject of the whitewash procedure.

See also Note 1 on Rule 9.1.

~~2.~~2. SPECIFIC GRANT OF WAIVER REQUIRED

In each relevant case, a specific grant by the Panel of a waiver of the Rule 9 obligation is required. While each application for such a waiver will be considered strictly on its merits, the Panel will generally insist on the following conditions:

~~(a)~~(a) there having been no disqualifying transactions (as set out in paragraph 3 below) during the preceding 12 months;

~~(b)~~(b) prior consultation with the Panel by the parties concerned or their advisers and full compliance by them with any rulings or directions of the Panel in relation to the transactions concerned;

~~(c)~~(c) approval in advance by the Panel of a circular from the offeree board to shareholders of the offeree setting out the details of the proposals;

~~(d)~~(d) prior approval of the proposals by an independent vote, on a poll, at a separate meeting of the holders of each relevant class of shares in the offeree (being a class of shares for which an offer would be required under Rule 9 in the absence of a waiver by the Panel), whether or not any such meeting needs, as a matter of law, to be convened to approve the issue of the securities in question; and

~~(e)~~(e) disenfranchisement, at each such meeting, of the person or persons seeking the waiver and of any other non-independent party.

COMMENTS ON PARAGRAPH 2:

A. Early consultation

Consultation with the Panel at an early stage is essential. Late consultation may well result in delays to planned timetables. Experience suggests that the documents sent to shareholders in connection with the whitewash procedure may have to pass through several proofs before they meet the Panel's requirements and no waiver of the Rule 9 obligation will be granted until such time as the documentation has been approved by the Panel.

B. Stock Exchange

It must be noted that clearance of the circular by the Stock Exchange does not constitute approval of the circular by the Panel.

3. DISQUALIFYING TRANSACTIONS

Notwithstanding that the issue of new securities is made conditional upon its prior approval by meetings of the holders of classes of relevant shares in accordance with paragraph 2 of this Note, it should be noted that:

~~(a)~~(a) *the Panel will not normally waive an obligation under Rule 9 if the person or persons to whom the new securities are to be issued or any person acting in concert with him or her or (as the case may be) any of them has purchased securities of the offeree during the 12 months prior to the posting to shareholders of the circular relating to the proposals but subsequent to the commencement of negotiations or discussions, or the reaching of understandings or agreements, with the directors of the offeree in relation to the proposed issue of new securities;*

~~(b)~~(b) *a waiver will generally be withdrawn if any purchases of securities of the offeree are made by or on behalf of such persons during the period between the ~~despatch~~ sending of the circular to shareholders and the meetings of the holders of the classes of relevant shares.*

4. *CIRCULAR TO SHAREHOLDERS*

The Panel would normally expect that the circular to the shareholders of the offeree would contain the following information and statements, and comply appropriately with the requirements of the Rules referred to below:

~~(a)~~(a) *competent independent advice, in accordance with Rule 3, to the offeree regarding the proposed transaction, the controlling position which it will create and the effect which this will have on shareholders generally, together with the information required by Rule ~~25.1~~ 25.2 (excluding Rule ~~25.1(a)(iii~~25.2(a)(iii));*

~~(b)~~(b) *full details of the potential controlling shareholders' maximum holding of securities on the basis that:*

> ~~(i)~~(i) *where this is dependent upon the outcome of underwriting arrangements, it must be assumed that the potential controlling shareholders will, in addition to any other entitlement, take up their full underwriting participation; and*
>
> ~~(ii)~~(ii) *where convertible securities, options or securities with subscription rights are to be issued, the potential controlling shareholding must be indicated on the assumption that only the controlling shareholders will exercise the conversion or subscription rights and that they will do so in full and at the earliest opportunity (the date of which must also be given);*

~~(c)~~(c) *where the potential controlling shareholders' maximum holding of securities resulting from the proposed transaction will confer in the aggregate more than 49.95% of the voting rights in the offeree, specific and prominent reference to this possibility and to the fact that the potential controlling shareholders might then be permitted by the Panel (and in the case of a single holder of more than 50%, would be permitted under the Rules) to increase their holding of securities without incurring any further obligation to make an offer under Rule 9 (See Note 4 on Rule 9.1);*

~~(d)~~(d) *in cases where there are more than one potential controlling shareholder, the identities of the potential controlling shareholders and details of their individual maximum potential holdings of securities of the offeree in addition to the information required under (h) below;*

~~(e)~~(e) *a statement that the Panel has agreed, subject to shareholders' approval, to waive any obligation to make an offer under Rule 9 that might result from the transaction;*

~~(f)~~(f) *Rule 19.2 (responsibility statements, etc.);*

~~(g)~~(g) *Rules 23, ~~24.1 and~~ 24.2 and 24.3 (information to shareholders which must include full details of the assets, if any, being injected);*

(h) *Rules ~~24.3~~ 24.4 and ~~25.3~~ 25.4 (disclosure of interests and dealings in relevant securities). Dealings should be covered for the 12 months prior to the dispatch of the circular but dealings in respect of Rule ~~25.3(c)(ii~~25.4(c)(ii) need not be disclosed as there is no offer period.*

(i) *Rules ~~24.5~~ 24.6 and ~~24.8~~ 24.9 (arrangements in connection with the proposal);*

(j) *Rule ~~25.4~~ 25.5 (service contracts of directors and proposed directors);*

(k) *Rule ~~25.6~~ 25.7(b) (material contracts);*

~~(l)~~(l) *Rule 26 (documents to be ~~on display~~published on a website); and*

~~(m)~~(m) *Rules 28 and 29 (profit forecasts and asset valuations relating to the offeree or relating to assets being acquired by the offeree).*

Panel approval of the circular to shareholders under paragraph 2 of this Note shall not be considered to constitute approval of the circular for any purpose of the Rules other than with respect to the specific grant of the waiver of the Rule 9 obligation in question and the Panel's review of or comment on any such circular shall not limit the statutory rights of the Panel.

5. *UNDERWRITING AND PLACING*

In cases involving the underwriting or placing of securities of the offeree, the Panel should be given details of all the proposed underwriters or placees, including any relevant information to establish whether or not there is a group of persons acting in concert, and the maximum potential aggregate holding of voting securities of the offeree which they could come to hold as a result of implementation of the proposals.

~~6.~~6. ANNOUNCEMENTS FOLLOWING SHAREHOLDERS' APPROVAL

~~(a)~~(a) Following the meeting or meetings at which the proposals are considered by shareholders, an announcement must be made by the offeree giving the result of the meeting or meetings and the number of securities of the offeree to which the potential controlling shareholders have thereby become entitled and the percentage of the total voting rights in the offeree represented by those securities.

~~(b)~~(b) Where the potential controlling shareholders' maximum holding of securities is dependent on the results of underwriting, the offeree must make an announcement following the issue of the new securities stating the number of securities of the offeree held by the controlling shareholders at that time and the percentage of the total voting rights in the offeree represented by those securities.

~~(c)~~(c) Where convertible securities, options or securities with subscription rights are to be issued:

~~(i)~~(i) the announcement pursuant to subparagraph (a) or (b) above must be made on the basis of the assumptions specified in paragraph 4(b) above; and

~~(ii)~~(ii) following each issue of new securities, a further announcement must be made stating the number of securities of the offeree held by the controlling shareholders at that time and the percentage of the total voting rights in the offeree represented by those securities.

Copies of announcements made under this paragraph must be delivered to the Panel by ~~facsimile, by hand or by~~ electronic mail not later than the time of issue.

~~7.~~7. SUBSEQUENT ACQUISITIONS BY CONTROLLING SHAREHOLDERS

~~(a)~~(a) Following approval of the proposals at the shareholders' meeting or meetings, any further acquisitions of securities of the offeree by the controlling shareholders will be subject to, inter alia, the provisions of Rules 5 and 9.

~~(b)~~(b) Where the shareholders of the offeree approve the issue of convertible securities or the issue of warrants or the grant of options to subscribe for new shares and those securities do not themselves confer voting rights, the Panel will normally treat the approval as sanctioning the maximum conversion or subscription of those securities at the earliest possible moment without any consequential obligations to make an offer under Rule 9.

~~(c)~~(c) Where the shareholders of the offeree have approved the issue of convertible securities or warrants or the grant of options to subscribe for new securities to the potential controlling shareholders, and if the potential controlling shareholders acquire further voting securities of the offeree after the date of the approval, the waiver will generally apply to the conversion into, or subscription for, such number of shares as, when added to such acquisition, does not exceed the number originally approved by shareholders. The Panel should be consulted if any such acquisition is proposed.

NOTES ON RULE 10

NOTE ON RULE 10.1

Waiver of 50% condition

In certain exceptional cases, the Panel may consider waiving the requirements of Rule 10.1 subject to prior consultation and to appropriate safeguards. This might be appropriate where, for example, following a major change of management policy it is desired to provide an opportunity for shareholders to dispose of their shares and where the offer is made on behalf of a group of investors who are otherwise wholly unconnected with each other and whose purpose is not to gain control.

NOTE ON RULE 10.3

Local practice

The Panel may consider varying the requirements of Rule 10.3 to conform with practice in those jurisdictions where the offeree's shares are listed, subject to prior consultation and to appropriate safeguards. The Panel should be consulted at the earliest opportunity in those circumstances where this note will be relevant.

US practice

Under typical US tender offer practice, a shareholder may validly accept an offer (x) by submitting to the offeror's exchange agent (receiving agent) a properly completed letter of transmittal (which the Panel will consider under Rule 10.3(b)) or (y) in the case of a book-entry transfer (for example through The Depository Trust Company ("DTC")), by procuring that the exchange agent receives an electronic message (which the Panel will consider under Rule 10.3(c)(ii)) from the operator of the book-entry transfer facility as part of a book-entry transfer confirmation that states that the facility has received an acknowledgement from the participant in the facility tendering the shares that such participant accepts and agrees to be bound by the terms of the offer (an "agent's message") or (z) by complying with the offeror's prescribed guaranteed delivery procedures (see below).

The offeror may prescribe, in the case of a book-entry transfer, that a properly completed letter of transmittal and any other required documents must, in any case, be received by the exchange agent in order that the shareholder may validly accept the offer (see Rule 10.3(b)(ii)). Where the terms of the offer so prescribe, an acceptance of an offer in respect of shares held through DTC will, therefore, be considered by the Panel under both Rule 10.3(b) and (c).

An offeror may provide in the terms of the offer that, in circumstances where, for example, share certificates in respect of the relevant shares or such other documents as are required by applicable practice and as are specified in the offer document in order to establish the right of the acceptor to become the registered holder of the relevant shares are not immediately available or where the shareholder cannot complete the procedure for delivery by book-entry transfer on a timely basis, a shareholder can accept an offer prior to the expiration date by delivering a notice of guaranteed delivery of such documents or confirmations to the exchange agent. The offeror may include the number of shares so accepted to the offer in any announcement made by it under Rule 17.1 if it specifies the number of shares that have been accepted to the offer by notice of guaranteed delivery. However, in determining whether an acceptance condition of an offer has been satisfied on or before the final closing date, only those acceptances may be counted which meet the requirements of Rule 10.3(b)(i), (ii) or (iv) or 10.3(c)(ii) (i.e., where the exchange agent has received those documents and/or confirmations the delivery of which was guaranteed).

Euroclear Bank

The Panel expects that each of the offeror and the offeree shall take such action as is necessary to notify Euroclear Bank of the offer (as a corporate action for the purpose of the rules of the Euroclear Bank settlement system) and to provide such information as Euroclear Bank may reasonably require to enable it to notify Euroclear Bank participants of the offer and process electronic instructions as envisaged by Rule 10.3(c)(i).

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.

NOTE ON RULE 10.5

Early satisfaction of acceptance condition

See the final paragraph under "US practice" in the note to Rule 10.3 above.

NOTES ON RULE 10.6

~~1.~~1. Reduced minimum acceptance level

Where the offeror has, subject to Rule 10.1, reserved the right to reduce the minimum acceptance percentage in the acceptance condition and exercises that right, it should promptly request that a receiving agent's certificate be issued, as provided in Rule 10.6 (b)(iii).

~~2.~~2. Announcement when an offer becomes unconditional as to acceptances

An offeror is obliged to make an announcement as required by Rule 17.1 following the issue of the receiving agent's certificate.

NOTES ON RULE 11

1. Application of Rule 11

Rule 11 applies to the acquisition of securities of the offeree of a class which is the subject of the offer.

Rule 11 also applies to acquisitions of securities convertible into, warrants in respect of, or options or other rights to subscribe for or acquire, existing or new securities of the offeree of a class which is the subject of the offer. Acquisitions of such securities convertible into, warrants in respect of, or options or other rights to subscribe for, existing or new securities will normally only be relevant to Rule 11 if they are both acquired within the Rule 11.1 relevant period or the offer period and converted or exercised (as applicable) in the relevant period or offer period. Such acquisitions will then be treated as if they were acquisitions of the underlying securities at a price calculated by reference to the acquisition price and the relevant conversion or exercise terms. In any case of doubt, the Panel should be consulted. No obligation will normally be incurred under Rule 11.1 if during the Rule 11.1 relevant period or the offer period convertible securities, warrants, options or other subscription rights that were acquired before the commencement of the Rule 11.1 relevant period are exercised. This is in contrast to the position under Rule 9.1 where such exercises are taken into account in establishing the minimum level of consideration for a mandatory offer.

~~*1.*~~*2.* *Simultaneous application of Rule 11.1 and Rule 11.2*

It is important for parties to be aware that, when a securities exchange offer is required under Rule 11.2, the offeror will normally also be obliged under Rule 11.1 to make a cash alternative offer in respect of the same offeree.

3. *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.

~~*3.*~~*4.* *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.)

~~*4.*~~*5.* *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)*~~*(a)* *the size and timing of the relevant acquisitions;*

~~*(b)*~~*(b)* *the attitude of the offeree board;*

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

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

6. *Securities exchange offer*

Where Rule 11.1 is applicable to a securities exchange offer which has been the subject of a Rule ~~2.5~~ 2.7 announcement, compliance with Rule 11.1 must be by means of a cash alternative offer. (See Rule ~~2.7~~2.11.)

7. *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).*

8. *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.

~~8.~~ 9. *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.

10. Management Retaining an Interest

If the only shareholders in the offeree who receive offeror securities are members of the management of the offeree, the Panel will consider waiving Rule 11.2 where the requirements of Rule 16.2 are complied with.

11. Dividends

Note 8 on Rule 6 also applies to acquisitions made during the period to which Rule 11.1 applies.

NOTES ON RULE 12

NOTES ON RULE 12(b)

~~1.~~1. *After an initiation of proceedings or referral by the European Commission*

See proviso (C) in the definition of "offer period" which will be relevant to the continued application of certain General Principles and Rules following the lapse of an offer on an initiation of proceedings or referral by the European Commission.

2. *Rule 12(b)(iv)(1)*

The Panel will normally require the offeror to announce its decision within 21 days after the issue of the clearance.

3. *Rules 12(b)(iii) and (iv)*

See Rule 35.1.

NOTES ON RULE 13

NOTE ON RULE 13.1

An element of subjectivity

The Panel may be prepared to accept an element of subjectivity in certain special circumstances where it is not practicable to specify all the factors on which satisfaction of a particular condition may depend, especially in cases involving statutory or regulatory approvals or consents, the granting of which may be subject to additional material obligations for the offeror. It would also normally be acceptable in an announcement for an offer to be expressed as being conditional on statements or estimates being appropriately verified.

NOTE ON RULE 13.2

The pre-conditions in respect of which the Panel may consider granting consent normally include a pre-condition that:

(a) relates to a decision by the European Commission, under the European Merger Regulation, not to initiate proceedings in respect of the offer concerned nor to refer it to a competent authority of a Member State;

(b) relates to a decision by the European Commission, under the European Merger Regulation, not to initiate proceedings in respect of the offer nor to refer it to a competent authority of a Member State or, if there is such an initiation of proceedings or referral, to a decision by the authority concerned to allow the offer to proceed (which decision may, in either case, be stated to be on terms acceptable to the offeror); or

(c) involves another material official authorisation or regulatory clearance relating to the offer and:

(i) the offer is publicly recommended by the board of the offeree; or

(ii) the Panel is satisfied that it is likely to prove impossible to obtain the authorisation or clearance within the timetable laid down by the Rules.

Where the Panel grants consent, it will usually, in the case of (a) or (b) above, also consent to the disapplication of Rule 13.3(a).

The Panel will not normally grant consent under (c) above where satisfaction of the pre-condition depends solely on subjective judgements by the directors of the offeror or of the offeree or is within their control.

See Note 4 on Rule ~~2.5~~2.7.

Whether a clearance under the Competition Act 2002 could be made the subject of a pre-condition to the making of an offer is, in the first instance, a matter for discussion with the Competition Authority.

NOTES ON RULE 13.3

1. Invocation of conditions

Rule 13.3(a) establishes two tests that must be satisfied to the Panel's satisfaction before an offeror can invoke a condition or pre-condition to an offer to lapse or withdraw the offer.

The first and primary test is the test of "material significance". An offeror would not be permitted to invoke a condition or pre-condition unless it would incur material adverse commercial consequences in the context of the offer if it were compelled by the Panel to continue with its offer. This test is not restricted to any particular type of condition or pre-conditions and will, for example, apply to any bespoke condition or pre-condition.

The second test is the "reasonableness" test. An offeror who has met the "material significance" test must also consult with the Panel and seek its confirmation that it is reasonable in the circumstances to invoke the condition or pre-condition.

Rule 13.3(c) establishes, similarly, "material significance" and "reasonableness" tests that must be satisfied before an offeree can invoke, or cause or permit the offeror to invoke, any condition to an offer.

The effect of Rule 13.3 is to overlay a materiality and reasonableness threshold on the ability of any party to invoke a condition or pre-condition to the offer regardless of the legal and contractual effect of the condition.

The Panel will judge whether circumstances are of material significance to the offeror in the context of the offer by reference to the facts of each case at the time the relevant circumstances arise.

The Panel considers that Rule 13.3 is understood to be the key protection against widely drafted conditions being invoked contrary to the reasonable expectations of the offeree's shareholders, the market and all parties to an offer. It is important that the standard for the invocation of a condition or pre-condition causing an offer to lapse or be withdrawn should be predictable and readily understood.

Rule 13.3(a) does not apply to the acceptance condition or to any anti-trust regulatory condition permitted by Rule 12(a)(i)(2) (relating to the Competition Act 2002) or by Rule 12(b)(ii) (relating to the EU Merger Regulation). The Panel will normally accept that Rule 13.3(a) also does not apply to a condition relating to compliance with the antitrust filing and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act 1976 (as amended) of the United States but this should be confirmed with the Panel on a case-by-case basis. Conditions relating to other anti-trust regulatory regimes are subject to the "material significance" and "reasonableness" tests of Rule 13.3(a).

Rule 13.3(a) applies in all other cases, including in relation to bespoke conditions. However, in applying the two tests prescribed by Rule 13.3(a), the Panel will take into account all relevant circumstances then prevailing, including: whether the condition was the subject of negotiation with the offeree; whether the condition was expressly drawn to offeree shareholders' attention in the offer document or announcement, with a clear explanation of the circumstances which might give rise to the right to invoke it; whether the condition was included to take account of the particular circumstances of the offeree; and whether the circumstances giving rise to the party's wish to invoke the condition are temporary or permanent.

The Panel may be more willing to permit a party to invoke a bespoke condition in light of an assessment of the foregoing factors, albeit the "material significance" and "reasonableness" tests will apply and will be reviewed by the Panel in any determination under Rule 13.3 as to whether, in the prevailing circumstances, it would be reasonable for a party to invoke a condition.

In considering the "material significance" test, the Panel will be concerned to establish, amongst other factors, whether the party was aware of, or should reasonably have foreseen, the relevant circumstance at the time of the announcement and/or making of the offer.

The fact that the Panel may allow the inclusion of any condition or pre-condition in the conditions to an offer shall not be taken into account in any determination of the Panel under Rule 13.3 as to whether, in the circumstances then prevailing, it would be reasonable for a party to invoke the condition or pre-condition to the offer to lapse or withdraw the offer.

2. Implementation Agreements

If it is a condition to an offer that an implementation agreement not have been terminated, the termination events prescribed by that implementation agreement (i.e., the circumstances specified in the agreement in which the agreement may be terminated by the parties) are conditions to the offer and the invocation of any such condition is subject to the consent of the Panel and falls to be assessed against the "material significance" and "reasonableness" tests prescribed by Rule 13.3. The fact that the Panel allows parties to an offer to enter an implementation agreement will not be taken into account in any determination of the Panel under Rule 13.3 as to whether, in the prevailing circumstances, it would be reasonable for a party to invoke a condition to the offer to lapse or withdraw the offer.

See also Note 2 to Rule 24.3.

NOTE ON RULE 13.4

Conditions which will normally be considered necessary for the purposes of Rule 13.4(b) include:

(i) the passing of any resolution necessary to create or allot the new securities and/or to allot the new securities on a non-pre- emptive basis (if relevant); and

(ii) where the new securities are to be admitted to listing or to trading on any investment exchange or market, any necessary listing or admission to trading condition (see also Rule 24.10).

NOTES ON RULE 14

1. Comparability

A comparable offer need not necessarily be an identical offer. In the case of offers involving two or more classes of quoted equity share capital, the ratio of the offer values should normally be equal to the ratio of the average daily closing dealt prices or market guide prices of the securities concerned over the course of the six months preceding the commencement of the offer period. The Panel ~~may decline to~~ will not normally permit the use of any other ratio unless the advisers to the offeror and offeree are jointly able to justify it. In the case of offers involving two or more classes of equity share capital, one or more of which is not quoted, the Panel should be consulted in advance in regard to the ratio of the respective offer values which ratio should be justified to the Panel.

2. Equity share capital

If the Panel considers that any class of share capital which falls within the definition of "equity share capital" has very limited equity rights, it may dispense with the requirement in Rule 14.1 that a comparable offer be made for such a class of equity share capital.

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)(xvi)~~ 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.

NOTES ON RULE 16

NOTES ON RULE 16.1

1. Top-ups and other arrangements

An arrangement to deal with favourable terms attached includes any arrangement where there is a promise to make good to a vendor of shares any excess of the price of any subsequent successful offer over the sale price. An irrevocable commitment to accept an offer combined with an option to put the shares if the offer fails is also such an arrangement.

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

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

Rule 16 also applies to cases in which a person interested in shares of an offeree is to be remunerated for the part that he or she has played in promoting the offer. The Panel may consent to such remuneration, provided that the interest in shares is not substantial and it can be demonstrated that a person who had performed the same services in comparable circumstances, but had not at the same time been interested in shares in the offeree, would have been entitled to receive no less remuneration.

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 those syndicatees in the syndicate concerned having established effective information barriers, which 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 of those syndicatees 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~~ Rules 20.1 and 20.2

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. The Panel will not normally require that management incentivisation arrangements or proposals the rights under which will or would be no more substantial

than any rights which the offeror has prior to the offer, in accordance with the terms of similar arrangements, awarded to members of its own management of similar grade, be approved at a general meeting of the offeree shareholders but will take into account whether such arrangements or proposals are of material significance to the members of management.

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.

NOTES ON RULE 17

NOTES ON RULE 17.1

1. Acceptances of cash underwritten alternative offers

Acceptances of cash underwritten alternative offers do not come within Rule 17.1.

2. Securities not quoted on ~~the Stock Exchange~~any recognised market

In the case of companies whose securities are not quoted on ~~the Stock Exchange~~any recognised market, it would normally be appropriate to write or send a notification to all shareholders instead of making an announcement.

3. Acceptances not complete in all respects

In accordance with US practice, an offeror may provide in the terms of the offer that, in circumstances where, for example, share certificates in respect of the relevant shares or such other documents as are required by applicable practice and as are specified in the offer document in order to establish the right of the acceptor to become the registered holder of the relevant shares are not immediately available or where the shareholder cannot complete the procedure for delivery by book-entry transfer on a timely basis, a shareholder can accept an offer prior to the expiration date by delivering a notice of guaranteed delivery of such documents or confirmations to the exchange agent. The offeror may include the number of shares so accepted to the offer in any announcement made by it under Rule 17.1 if it specifies in the announcement the number of shares that have been so accepted to the offer by notice of guaranteed delivery. However, in determining whether an acceptance condition of an offer has been satisfied on or before the final closing date, only those acceptances may be counted which meet the requirements of Rule 10.3(b)(i), (ii) or (iv) or 10.3(c)(ii) (i.e., where the exchange agent has received those documents and/or confirmations the delivery of which was guaranteed). See also the Note on Rule 10.3.

NOTES ON RULE 19

NOTES ON RULE 19.1

1. Advisers' responsibility for release of information

The Panel regards financial advisers as being responsible for guiding their clients and any relevant public relations advisers with regard to any information published during the course of an offer, including information published on social media.

~~Advisers~~ *Financial advisers must ensure at an early stage that directors and officials of companies are warned that they must consider carefully the implications under the Rules of what they say, particularly when giving interviews to, or taking part in discussions with, the media. It is very difficult after publication to alter an impression given or a view or remark attributed to a particular person. Control of any possible abuse lies largely with the person being interviewed. In appropriate circumstances, the Panel will require a statement of retraction. Particular areas of sensitivity on which comment must be avoided include future profits and prospects, asset values and the likelihood of the revision of an offer. (See also Rule ~~20.1(b~~20.2(a).)*

2. Unambiguous language

The language used in documents, releases or advertisements must clearly and concisely reflect the position being described. In particular, the word "agreement" must be used with the greatest care. Statements which may give the impression that persons have committed themselves to certain courses of action (for example, accepting in respect of their own shares) if they have not in fact done so must be avoided.

3. Third party forecasts and estimates ~~See Rule 28.6(i)~~

See Rule 28.1(h)

4. "..in connection with…"

This phrase is used in a wide sense so that, for example, an advertisement that does not explicitly or implicitly refer to an offer may nevertheless be regarded as published "in connection with" that offer if the advertisement is intended or likely to influence, directly or indirectly, the attitude to the offer of any of the parties to the offer or of any other person concerned with the offer. A useful, if not a definitive, test as to whether an advertisement would fall within this category would be whether it would have been published, or published in its proposed form, in the absence of the offer concerned.

The Panel does not consider that Rule 19 covers contractual agreements between the parties to an offer (such as implementation agreements) even where, in accordance with applicable requirements, copies of such agreements are made available in connection with the offer.

The Panel will normally consider that documentation published in connection with the debt syndication of an offer where consent to such debt syndication has been given by the Panel is not published "in connection with" that offer so that it will not require the inclusion of a responsibility statement in compliance with Rule 19.2.

NOTES ON RULE 19.2

1. Delegation of responsibility

If detailed supervision of any document or advertisement has been delegated to a committee of the board, each of the remaining directors of the company must reasonably believe that the persons to whom supervision has been delegated are competent to carry it out and each such director must have disclosed to the committee all relevant facts directly relating to himself or herself (including his or her close relatives and related trusts) and all other relevant facts known to him or her and relevant opinions held by him or her which, to the best of his or her knowledge and belief, either are not known to any member of the committee or, in the absence of his or her specifically drawing attention thereto, are unlikely to be considered by the committee during the preparation of the document or advertisement. This does not, however, override the requirements of recognised markets relating to the acceptance of responsibility for listing particulars where applicable.

~~2. Expressions of opinion~~

The responsibility statement is regarded by the Panel as embracing expressions of opinion in the document or advertisement.

2. ~~3.~~Quoting information about another company

If a company issues a document or advertisement containing information about another company which makes it clear that such information has been compiled from published sources, the directors of the company issuing the document or advertisement need only take responsibility, as regards the information so compiled, for the correctness and fairness of its reproduction or presentation. The responsibility statement may be amended accordingly but where it relates to listing particulars the provisions of the listing rules of relevant recognised markets may affect the position. Where statements of opinion or conclusions concerning another company or unpublished information originating from another company are included, these must normally be covered by a responsibility statement by the directors of the company issuing the document or advertisement or by the directors of the other company; the qualified form of responsibility statement provided for in this Note is not acceptable in such instances. In all cases of quoted material, the directors carry responsibility for ensuring that it is not presented out of context.

3. ~~4.~~Responsibility for part of ~~listing particulars~~a prospectus

If, for the purposes of obtaining a quotation for new securities, persons other than the directors accept responsibility for part of a document which comprises ~~or includes listing particulars~~a prospectus, the Panel should be consulted.

4. ~~5.~~Exclusion of directors

Although the Panel may be willing to consider the exclusion of a director from the responsibility statement in appropriate circumstances, the provisions of the listing rules of relevant recognised markets may affect the position if that statement relates to listing particulars.

5. ~~6.~~When an offeror is controlled

If the offeror is controlled by another person or group of persons, the Panel may require that, in addition to the directors of the offeror, other persons (for example, directors of an ultimate parent) take responsibility for documents or advertisements issued by or on behalf of the offeror. In such circumstances, the Panel should be consulted.

6. ~~7.~~Split responsibility in recommended documents.

In the case of a recommended offer, where the recommendation on behalf of the offeree board is included in the offer document, it is in order for the responsibility statement to specify that the letter of recommendation and information on the offeree is the responsibility of the directors of the offeree, and to specify that the remainder of the document is the responsibility of the directors of the offeror. If there is any doubt about the appropriate division of responsibility, the Panel should be consulted.

NOTES ON RULE 19.3

1. Consulting the Panel

In the case of any doubt as to the application of this rule to a proposed statement, the party concerned and its advisers should consult the Panel.

~~*2. Holding statements*~~

~~While an offeror may need to consider its position in the light of new developments and may make a statement to that effect, and while a potential competing offeror may make a statement that it is considering making an offer, it is not acceptable for such statements to remain unclarified for more than a limited time, particularly in the later stages of the offer period. Before any statements of this kind are made, the Panel should be consulted as to the period allowable for clarification. This does not diminish the obligation to make timely announcements under Rule 2.~~

2. ~~3.~~Statements of support

The offeree ~~board~~ or offeror must not make statements about the level of support from ~~its~~ the offeree's or offeror's shareholders unless ~~their~~ such shareholders' up-to-date intentions have been clearly stated to the offeree or its advisers or (as the case may be) the offeror or its advisers. The Panel will require any such statement to be verified to its satisfaction; this ~~may~~ will include immediate confirmation ~~being given directly to the Panel by the relevant shareholders~~in writing to the relevant party to the offer or its adviser and that confirmation being provided to the Panel. Such confirmation will then be treated as a letter of intent. The Panel will not require separate verification by an offeror where the information required by Rule 2.9 is included in an announcement of an offer or possible offer which is published no later than 12 noon on the business day following the date on which the letter of intent is procured.

NOTES ON RULE 19.4

1. "….in connection with…"

~~This phrase is used in a wide sense so that, for example, an advertisement that does not explicitly or implicitly refer to an offer may nevertheless be regarded as published "in connection with" that offer if the advertisement is intended or likely to influence, directly or indirectly, the attitude to the offer of any of the parties to the offer or of any other person concerned with the offer. A useful, if not a definitive, test as to whether an advertisement would fall within this category would be whether it would have been published, or published in its proposed form, in the absence of the offer concerned.~~

See note 4 on Rule 19.1.

2. Approval

When its approval of advertisements is being sought, the Panel should be given at least 24 hours to consider a proof; in certain circumstances, a longer period may be required. Such proofs should have been approved by the financial adviser.

3. Verification

The Panel will not verify the accuracy of statements made in advertisements submitted for approval. If subsequently it becomes apparent that any statement was incorrect, the Panel may at the least require an immediate correction.

4. Forms

Acceptance forms, withdrawal forms, proxy cards or any other forms connected with an offer should not be published in newspapers.

~~5. Rule 19.4(a)(iii)(9)~~

~~Consent under this paragraph might be given, for example, if it were necessary to communicate with shareholders during a postal strike or in the circumstances referred to in Rule 20.1(b)(ii).~~

NOTES ON RULE 19.5

1. Consent to use of other callers

If it is impossible to use staff of the type mentioned in Rule ~~19.5.~~ 19.5, the Panel may consent to the use of other people. Any such consent may be given subject to conditions such as the following:

(a) an appropriate script for callers being approved by the Panel;

(b) the financial adviser carefully briefing the callers prior to the start of the operation and, in particular, stressing:

(i) that callers must not depart from the script;

(ii) that callers must decline to answer questions the answers to which fall outside the information given in the script; and

(iii) the callers' responsibilities under General Principle 1; and

(c) the operation being supervised by the financial adviser.

2. Gathering of irrevocable commitments

In accordance with Rule 4.3, the Panel must be consulted before a telephone campaign is conducted with a view to gathering irrevocable commitments in connection with an offer. Rule 19.5 applies to such campaigns although, in appropriate circumstances, the Panel may permit those called to be informed of details of a proposed offer which has not been publicly announced. Attention is, however, drawn to General Principles 1 and 2.

3. Statutory and regulatory provisions

The Rules and any decisions of the Panel relative to telephone campaigns are concerned only with matters which come under the regulation of the Panel. Other statutory or regulatory constraints may apply and may vary depending on the country of origin of telephone calls, or the country to which a call is made.

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 in respect of which callers must decline to answer questions in relation to 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.

NOTE ON RULE 19.6

Joint interviews and debates

Joint interviews and debates between representatives of an offeror and the offeree, or between representatives of competing offerors, are of their nature confrontational and thus increase the risk that the standards of accuracy, completeness and fair presentation required by the Rules may not be safeguarded and that misleading or inaccurate statements may be made. The often heated and complicated nature of such interviews and debates contributes to this problem. Where representatives of the offeror and the offeree or of competing offerors are to participate in a joint interview or debate, the financial adviser to each party has a particular responsibility to ensure that no new information is disclosed, and that no misleading or inaccurate statement is made, by that adviser's client; and to ensure that, if any such misleading or inaccurate statement is made, it is corrected during the course of the interview or debate, as it is likely to be very difficult to correct the error subsequently, particularly where that interview or debate has received widespread media coverage.

~~NOTE ON RULE 19.7~~

~~Release of information~~

~~No party to an offer should be put at a disadvantage through delay in the release of information to it.~~

~~NOTES ON RULE 19.9~~

NOTES TO RULE 20

NOTES ON RULES 20.1 and 20.2

~~*1. Information incorporated by reference See Rule 24.15(b).*~~

~~*2. Documents to be on display See Rule 26.*~~

~~*3. Restricting access to websites See Rule 2.4(a) of Part A of the Rules.*~~

~~*1.*~~*1.* *Furnishing of information to offerors*

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

~~*2.*~~*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)*~~ *20.2 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.*

~~*3.*~~*3.* *Meetings with shareholders, analysts, stockbrokers etc.*

In view of their obligation to satisfy the Panel concerning the conduct of such meetings, financial advisers or corporate brokers may find it useful to record the proceedings of such meetings. ~~In the case of information or opinions communicated by electronic means, the contact should be made by or under the supervision of the relevant financial adviser or corporate brokers, who should report to the Panel as required by Rule 20.1(b)~~

~~*4.*~~*4.* *Third party forecasts and estimates*

See Rule 28.1(h).

~~*5.28.6(i)*~~*5.* *Debt syndication during an offer period*

The Panel may consider granting a derogation from ~~Rule~~ *Rules 20.1 and 20.2 to permit the provision, on behalf of an offeror, of non-public information to members of a syndicate, subject to:*

~~(a)~~(a) each of the syndicatees in the syndicate concerned having established effective information barriers, which 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)~~(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~~ Rules 20.1 and 20.2 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.

6. Rule 26

Announcements pursuant to Rule 20.2(a)(ii) will be required to be published on a website in accordance with Rule 26.

7. Employee Communications

Although Rule 20.2(a)(iii) provides that Rule 20.2(a)(i) shall not apply to a meeting with employees in their capacity as such, if any material new information or significant new opinion is disclosed or expressed at any such meetings, Rule 20.2(a)(ii) will apply.

8. Meetings following the announcement of a recommended firm offer

(a) In the case of meetings which take place following the announcement of a recommended firm offer and where there is no competitive situation, the Panel will consider granting a dispensation from the requirement for the meetings to be attended by a financial adviser or corporate broker in accordance with Rule 20.2(a)(i), provided that:

(i) the financial adviser to the offeror or offeree (as appropriate) provides an appropriate briefing to the representative(s) of, or adviser(s) to, the offeror or offeree who will attend the meetings as to the requirements of Rule 20.1 and Rule 20.2 and as to the information and opinions which may and may not be provided at the meetings; and

(ii) a senior representative approved by the Panel of, or an adviser to, the offeror or offeree who attends any meeting must, by not later than 12 noon on the following business day, confirm in writing to the Panel the matters set out in Rule 20.2(a)(i).

(b) The Panel may withdraw a dispensation granted under paragraph (a) at any time and will normally do so if, for example, the board of the offeree withdraws its recommendation, a competitive situation arises or some other material development occurs. The Panel should be consulted in the case of any doubt as to whether a dispensation should continue to apply.

NOTE ON RULE ~~20.2~~20.3

General enquiries

The less welcome offeror should specify the questions to which it requires answers. It is not entitled, by asking in general terms, to receive all the information supplied to a competing offeror.

NOTE ON RULE 20.5

Webcasts and audio-only communications

Rule 20.5 applies also to webcasts and audio-only communications.

NOTES ON RULE 21

NOTES ON RULE 21.1

~~1.~~1. *Frustrating action*

Having regard to the potential difficulty of reversing actions involving third parties, it is most important that the offeree board and its advisers consider carefully, in the context of Rule 21.1, any proposed action which is not in the ordinary course of the offeree's business. ~~In any case of doubt, the Panel should be consulted.~~

In considering whether an action would constitute frustrating action, the Panel may take into consideration whether the offeror is consenting to the action proposed to be taken.

The Panel will also take into consideration whether a proposed action is conditional on the offer being withdrawn or lapsing. In the event that Panel consent is given to such a proposed action on the basis that such action would not constitute frustrating action, consent will be conditional on the publication by the board of the offeree of an announcement containing the details set out in Rule 21.1(b)(iii).

2. *"Material amount"*

(a) *For the purposes of determining whether a disposal or acquisition entails assets or profits of "a material amount", the Panel will normally have regard to factors including the following:*

~~(a)~~(i) *the aggregate value of the consideration to be received or paid compared with the market capitalisation of the offeree;*

~~(b)~~(ii) *the value of the assets to be disposed of or acquired compared with the assets of the offeree; and*

(iii) *the operating profit (i.e profit before tax and interest and excluding exceptional items)attributable to the assets to be disposed of or acquired compared with the operating profit of the offeree.*

For these purposes, the term "assets" will normally mean total assets less current liabilities (other than short term indebtedness).

The Panel will normally consider relative values of 10% or more as being of a material amount, although relative values lower than 10% may be considered material if the asset is of particular significance to the offeree or the offer.

If several transactions relevant to this Rule, but not individually material, occur or are intended, the Panel will aggregate such transactions to determine whether the requirements of this Rule are applicable.

~~The Panel should be consulted in advance where there may be any doubt as to the application of the above.~~

(b) *The figures to be used for the above calculations must be:*

(i) *for market value of the shares of the offeree, the aggregate market value of all the equity shares of the company at the close of business either:*

(1) *on the business day immediately preceding the start of the offer period; or*

(2) *if there is no offer period, on the business day immediately preceding the announcement of the transaction; and*

(ii) *for assets and profits, the figures stated in the latest published audited consolidated accounts of the offeree or, where appropriate, a subsequent preliminary statement of annual results or half-yearly financial report.*

3. *Interim dividends*

The declaration and payment of an interim dividend by the offeree, otherwise than in the normal course, during an offer period may in certain circumstances be contrary to General Principle 3 and to this Rule in that it could effectively frustrate an offer. Offerees and their advisers must, therefore, consult the Panel in advance if any such declaration or payment is proposed.

4. *Service contracts*

The Panel may regard the amendment of or entry into a service contract with, or the creation or variation of the terms of employment of, a director as the entry into a contract "otherwise than in the ordinary course of business" for the

purposes of this Rule if the new or amended contract or terms constitute an abnormal increase in emoluments or a significant improvement in terms of service. An agreement by an offeree to make a special payment to a director in respect of work done in connection with an offer will normally be regarded by the Panel as such a contract. The Panel should be consulted in any such case and any consent granted by it may be subject to conditions including, where appropriate, the approval of the shareholders in general meeting.

This will not prevent any such increase or improvement which results from a bona fide promotion or new appointment but the Panel should be consulted in advance in such cases and will require to be satisfied that the changes proposed are justified and appropriate.

~~5.~~5. *Established share option schemes*

The Panel may grant its consent where the offeree proposes to grant options over shares, the timing and level of which are in accordance with its normal practice under an established share option 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 under an established share option scheme.

6. *Pension schemes*

This Rule may apply to proposals affecting the offeree's pension scheme arrangements, such as proposals involving the application of a pension fund surplus, a material increase in the financial commitment of the offeree in respect of its pension scheme or a change to the constitution of the pension scheme. The Panel should be consulted in advance in relation to such proposals.

~~Redemption or purchase by an offeree of its own securities See Rule 4.1(f).~~7. Shareholders' Meeting

In respect of Rule 21.1 (b)(ii), the Panel will seek to ensure that shareholders have sufficient time following the general meeting to enable them to reach a properly informed decision on the offer.

~~7.8.~~8. *Lapse of an offer under Rule 12(b)(i)*

General Principle 3 and Rule 21.1 will normally continue to apply following the lapse of an offer on an initiation of proceedings or referral by the European Commission. See proviso (C) in the definition of "offer period".

~~9.~~9. *Panel consent under Rule 21.1(a)(iv)*

In determining whether to grant consent the Panel will wish to be satisfied that the contract places the board of the offeree under a contractual obligation to take the specific action in question.

10. *Conditional contracts*

The Panel should be consulted before the offeree enters into any contract to take any action that might constitute frustrating action even if the contract provides that the taking of that action is to be subject to the approval of the offeree's shareholders. The Panel will be concerned to assess whether the contract contains other provisions (for example, cost cover arrangements) that may constitute frustrating action.

11. *Asset Purchases and Sales*

Where an offeree intends to seek the approval of shareholders in general meeting pursuant to Rule 21.1(a)(i) for the purchase or sale of assets, the Panel should be consulted in all cases to determine whether Panel consent may also be required under Rule 21.1(a)(5).

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 not obtained. The Panel may consent to the entering into of such an arrangement provided that: (a) the aggregate value of the inducement fee or fees that may be paid by the offeree in relation to the same asset(s) is no more than 1% of the value of the transaction (or, if there are two or more transactions in respect of the same asset(s), the transaction with the highest value) and (b) the aggregate value of the inducement fee or fees that may be paid by the offeree in respect of all transactions to which Rule 21.1 applies (not including inducement fees to which Rule 21.2 applies) is no more than 1% of the value of the offeree calculated by reference to the value of the offeror's offer at the time of the announcement made under Rule 2.7.

NOTE ON RULE 21.2

Inducement ~~or break fees~~Fees

The consent of the Panel to arrangements as described in Rule 21.2, if granted, would normally be on the basis of the following written confirmations to the Panel by the offeree:

(a) ~~relate~~ *the inducement fee relates only to specific quantifiable third party costs~~, subject to an upper limit of 1% of the value of the offer, and to confirmation~~.*;

(b) the value of the inducement fee that may be paid by the offeree to the offeror is no more than 1% of the value of the offeree calculated by reference to the value of that offeror's offer at the time of the announcement made under Rule 2.7;

(c) if there are two or more offerors, the aggregate value of the inducement fee or fees that may be paid by the offeree in respect of all transactions to which Rule 21.2 applies is no more than 1% of the value of the offeree calculated by reference to the value of the highest offer at the time of its announcement under Rule 2.7;

(d) the offeree board considers the proposed arrangement to be in the best interests of the shareholders of the offeree; and

(e) the inducement fee is capable of becoming payable only after an announcement is made under Rule 2.7 and only if (i) an offer or competing proposal for the offeree is declared wholly unconditional or completes or (ii) the offeree board changes its recommendation with respect to the offer to which the inducement fee relates.

In addition, consent would normally be given on the basis that the offeree's financial advisers confirm in writing to the Panel ~~from the offeree board and its financial adviser~~ that they consider the proposed arrangement to be in the best interests of the shareholders of the offeree.

The Panel's consent will be conditional upon it receiving an electronic copy of the executed contract.

Any VAT payable as a result of the payment of an inducement fee to an offeror should be taken into account in determining whether the 1% limit would be exceeded (except to the extent that such VAT is recoverable by the offeree company).

Any consent given under Rule 21.2 will also be deemed to constitute consent for the purposes of Rule 21.1 in so far as that is required.

The Panel may consent to the offeree agreeing inducement fees with multiple bidders or potential bidders provided that the aggregate amount that may be paid by the offeree in respect of all such inducement fees does not exceed 1% of the value of the offeree calculated by reference to the value of the offeror's offer (or, if there are two or more offerors, the highest offer). The Panel should be consulted at the earliest opportunity in any case where it is proposed that the offeree enter into more than one inducement fee arrangement.

NOTE ON RULE 22

Qualifying periods

Provisions in Articles of Association which lay down a qualifying period after registration during which the registered holder cannot exercise his or her votes are highly undesirable.

NOTE ON RULE 23

Material Changes

See also Rule 27.

NOTES ON RULE 24

NOTE ON RULE ~~24.2~~24.1

Regulatory Information Service announcements and website publications

See also Rule 26 and Rule 30.5(d).

NOTES ON RULE 24.3

1. Further information requirements

Whilst the precise nature of the further information which may be required to be disclosed under Rule ~~24.2~~ 24.3 (~~a)(iii~~a)(vii) in any particular case will depend on the circumstances of that case, the Panel would normally expect it to include a general description of the business interests of the offeror and/or other person(s) concerned and details of those assets which the Panel considers may be relevant to the business of the offeree.

2. Implementation Agreements

If it is a condition to an offer that the implementation agreement not have been terminated, the termination events prescribed by that implementation agreement (i.e., the circumstances specified in the agreement in which the agreement may be terminated by the parties) in addition to being included as conditions to the offer, must be stated in terms compliant with Rule 13.1.

See also Rule 13.3 and the note thereto in relation to the invocation of any such conditions.

NOTES ON RULE ~~24.3~~24.4

1. Aggregation

There may be cases where little useful purpose would be served by listing a large number of transactions. In such cases the Panel may, on an application for derogation, accept in documents some measure of aggregation of each type of dealing by a person provided that no significant dealings are thereby concealed. The following approach is normally acceptable:

~~(i)~~(i) for dealings during the offer period, all acquisitions and all disposals can be aggregated;

~~(ii)~~(ii) for dealings in the three months prior to the commencement of the offer period, all acquisitions and all disposals in that period can be aggregated on a monthly basis; and

~~(iii)~~(iii) for dealings in the nine months prior to that period, acquisitions and disposals can be aggregated on a quarterly basis.

Acquisitions and disposals should not be netted off, the highest and lowest prices should be stated and the disclosure should distinguish between the different categories of interests in relevant securities and short positions. A full list of all dealings, together with a draft of the proposed aggregated disclosure, should be sent to the Panel, for its approval, in advance of the posting of the offer documentation and the full list of dealings should be made available for inspection (see Rule 26~~(b)(ix~~.3(viii)).

~~2.~~2. *Discretionary fund managers and principal traders*

Interests in relevant securities and short positions of principal traders and of the discretionary clients of fund managers connected with the offeror, unless they are exempt, and their dealings during the period beginning 12 months prior to the commencement of the offer period will need to be disclosed.

3. *Offer period*

See the definition of "offer period", in relation to the commencement date of an offer period for the purposes of Rule ~~24.3(c~~24.4(c), where:

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

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

NOTE ON RULE ~~24.4~~24.5

Commissions etc.

Information given under this Rule should include any alterations to fixed amounts receivable or, as far as practicable, the effect of any factor governing commissions or other variable amounts receivable. Grouping or aggregating the effect of the transaction on the emoluments of several or all of the directors will normally be acceptable.

NOTE ON RULE ~~24.5~~24.6

Management incentivisation arrangements

See Rule 16.2.

NOTE ON RULE ~~24.6~~24.7

Incorporation by reference

A suitable cross-reference to Rules 10.3 to 10.5 is regarded as being sufficient to reflect appropriately those Rules but cross references to other provisions of the Rules are not permitted as a means of meeting the requirements of Rule ~~24.6~~24.7.

NOTE ON RULE 24.11

The Panel should be consulted at an early stage if the offeror intends to offer a contingent value right (CVR) as part of the offer consideration. CVRs can take many forms but typically provide the holder of the CVR with a right to a cash payment or payments, conditional on the happening of a specific event or contingency (comparable to contingent consideration in a private acquisition) or provide offeree shareholders with an ongoing right to participate in the offeree's future performance (comparable to an earn-out in a private acquisition).

Rule 24.11 is relevant where the CVRs take the form of notes or other securities for which no quotation will be sought. Rule 24.11 provides that, when the consideration under an offer includes the issue of unquoted securities, the offer document and any subsequent circular from the offeror must contain an estimate of the value of such securities by an appropriate adviser. The Panel recognises that valuing the CVRs at the time of issue may be difficult given the contingent nature of the payments and may waive the requirement to do so taking into account the particular circumstances of the case and the characteristics of the CVRs, including whether they are non-transferable and whether they do not have equity like characteristics. The Panel will normally expect that, given their contingent nature, cash payments to be made under CVRs will not be subject to cash confirmation by the financial adviser under Rules 2.7 and 24.8. The Panel should always be consulted.

NOTE ON RULE 24.12

Panel consent

The Panel would grant consent under Rule ~~24.11~~ 24.12 only in exceptional circumstances and if all shareholders were to be treated similarly.

NOTES ON RULE 24.15

~~1.~~1. Accessibility to information

Information that is incorporated by reference to another source should be capable of being accessed by shareholders as quickly and easily as possible.

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

~~2.~~2. Restricting access to websites

See Rule ~~2.4(a) of Part A of the Rules~~30.4.

NOTES ON RULE 25.~~1~~

NOTE ON RULE 25.1

Regulatory Information Service announcements and website publications

See also Rule 26 and Rule 30.5(d).

NOTES ON RULE 25.2

~~1.~~1. *When a board has effective control*

A board whose shareholdings confer control over a company which is the subject of an offer must carefully examine the reasons behind the advice it gives to shareholders and must be prepared to explain its decisions publicly. Shareholders of companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.

~~2.~~2. *Conflicts of interest (see also Note 2 on Rule 3.1)*

Depending on the circumstances, a director who has a conflict of interest may have to make the responsibility statement required by Rule 19.2, appropriately amended to make it clear that he or she does not accept responsibility for the views of the board on the offer. If the statement relates to listing particulars, the provisions of the listing rules of relevant recognised markets may affect the position.

3. *Management buy-outs*

If the offer is a management buy-out or similar transaction, a director will be regarded as having a conflict of interest if it is intended that he or she should have any continuing role (whether in an executive or non-executive capacity) in either the offeror or offeree in the event of the offer being successful.

NOTES ON RULE ~~25.3~~25.4

1. *Aggregation*

Note 1 on Rule ~~24.3~~ 24.4 is also applicable to Rule ~~25.3~~25.4

2. *Offer period*

See the definition of "offer period", in relation to the commencement date of an offer period for the purposes of Rule ~~25.3(c~~25.4(c), where:

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

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

NOTE ON 25.5

Particulars of directors' service contracts

The disclosure requirements will not be satisfied by a statement in the circular that information regarding service contracts may be found in the latest annual report, or by a statement that the relevant service contracts are available for inspection at a specified place.

~~*1. Documents to be published on a website*~~

~~See Rule 19.9 and Rule 2.4(a) of Part A of the Rules.~~

NOTES ON RULE 26

1. Restricting access to websites

See Rule 30.4(a)

2. Financing documents

The Panel will consider permitting the offeror to redact certain information if it can be shown that such information is commercially sensitive and that the redaction of the information would not render the document unintelligible.

NOTE ON RULE ~~28~~27

See also Rule 23.1(a).

~~NOTE~~ *NOTES ON RULE 28.1*

1. Existing forecasts

At the outset, an adviser should invariably check whether or not his or her client has a forecast on the record and if so, the ~~procedures~~ procedure required by Rule ~~28.6(b~~ 28.1(b), Rule 28.1(c), Rule 28.2(b) and Rule 28.2(c), as appropriate, should be completed with a minimum of delay.

~~NOTE ON RULE 28.2~~

~~General rules~~

~~*(a) The following general rules apply to the selection and drafting of assumptions:*~~

~~*(i) The shareholder should be able to understand their implications and so be helped in forming a judgement as to the reasonableness of the forecast and the main uncertainties attaching to it;*~~

~~*(ii) The assumptions should, wherever possible, be specific rather than general, definite rather than vague;*~~

~~*(iii) All-embracing assumptions and assumptions relating to the general accuracy of the estimates should be avoided.The following would not be acceptable:*~~

~~"Sales and profits for the year will not differ materially from those budgeted for."~~

~~"There will be no increases in costs other than those anticipated and provided for."~~

~~Every forecast involves estimates of income and of costs and must obviously be dependent on these estimates.Assumptions of the type illustrated above do not help the shareholder in considering the forecast;~~

~~*(iv) The assumptions should not relate to the accuracy of the accounting systems. If the systems of accounting and forecasting are such that full reliance cannot be placed on them, this should be the subject of some qualification in the forecast itself. It is not satisfactory for this type of deficiency to be covered by the assumptions. The following would not be acceptable:*~~

~~"The book record of stock and work-in-progress will be confirmed at the end of the financial year"; and~~

~~*(v) The assumptions should relate only to matters which may have a material bearing on the forecast.*~~

~~*(b) Even the more specific type of assumption may still leave shareholders in doubt as to its implications, for instance:*~~

~~"No abnormal liabilities will arise under guarantees." "Provisions for outstanding legal claims~~

~~will prove adequate."~~

~~Such phrases may be dismissed on the grounds that the first relates to the unforeseen and the second to the adequacy of the estimating system. In both these examples, information would be necessary about the extent or basis of the provision already made and/or about the circumstances in which unprovided for liabilities might arise.~~

~~*(c) There may be occasions, particularly when the estimate relates to a period already ended, on which no assumptions are required.*~~

~~NOTE ON RULE 28.3~~

~~Exceptionally, the Panel may accept that, because of the uncertainties involved, it is not possible for a forecast previously made to be reported on in accordance with these Rules nor for a revised forecast to be made. In such circumstances, the Panel will require that shareholders be given a full explanation as to why the requirements of these Rules were not capable of being met.~~

~~NOTE ON RULE 28.5~~

~~If the required statement cannot be made, the company concerned should consult the Panel immediately to seek its approval of an appropriate alternative statement.~~

2. Targets etc.

A statement described as a "target", "budget" or similar will normally be treated as a profit forecast, even if it is stated that it is not an indication of the likely level of profits, unless it is clear to the Panel that the statement is no more than aspirational.

3. Ordinary course profit forecasts

(a) Save where stated to the contrary in the Rule, the reference in Rule 28.1 to profit forecasts also applies to ordinary course profit forecasts as defined in Rule 2.1 of Part A.

(b) If, during an offer period (or in an announcement which commences an offer period), the offeree or a securities exchange offeror publishes an ordinary course profit forecast for 15 months or less, Rule 28.1(a) applies and the document or announcement in which the ordinary course profit forecast is first published shall include the reports from its reporting accountants and financial adviser(s) required by Rule 28.1(a)(i) and (ii). However, except in the case of a management buy-out or an offer being made by a person who controls, or who together with persons acting in concert controls, the offeree, the Panel, with the agreement of each of the other parties to the offer, may consent to waiving the requirement for reports, in which case the document or announcement referred to in that rule shall include the directors' confirmations required by Rule 28.1(c)(i).

(c) The Panel must be consulted if the offeree or a securities exchange offeror considers that a profit forecast should be treated as an ordinary course profit forecast.

4. Profit forecast for part of a business

Except with the consent of the Panel, Rule 28 applies in the same way to a profit forecast which relates to any part of the business of the offeree or a securities exchange offeror as to a profit forecast which relates to the group as a whole.

5. Fairness opinions

The Panel should be consulted if the offeree or a securities exchange offeror proposes to publish in an offer document or offeree response circular, in the context of the publication of a financial adviser's fairness opinion (or a summary of that opinion), prospective financial information on the offeree or the securities exchange offeror. Such information may be treated by the Panel as a profit forecast to which Rule 28 applies.

Where it is established that the prospective financial information is included in order to comply with the requirements of applicable law and regulation, 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.

NOTES ON RULE 28.2

1. Other financial periods

The requirements of Rule 28.2(d) will also apply where the offeree or a securities exchange offeror publishes a profit forecast for a financial period other than a financial year.

2. Rule 28.2(d)

Where profit forecasts are required to be made for the first time in accordance with Rule 28.2(d), the requirements of Rule 28.1(a) and Rule 28.2(a) apply as appropriate to those forecasts. The forecasts which are referred to in Rule 28.2(d) as having been repeated will be subject to Rule 28.1 and Rule 28.2 in the usual way.

3. Ordinary Course

Although ordinary course profit forecasts will generally be short term, Rule 28.2 will apply to long term profit forecasts irrespective of whether they are "one-off" or ordinary course.

4. Rule 28.1

See Rule 28.1(f) to (i) and Notes 1, 2 and 4 to Rule 28.1 which also apply to long term profit forecasts.

NOTE ON RULE 28.5

~~*2.*~~

~~NOTE ON RULE 28.6~~

~~*1. When no figure is mentioned*~~

~~Depending on the context, certain forms of words may constitute a profit forecast, notwithstanding that no particular figure is mentioned or that the word profit is not used. Examples are "profits will be somewhat higher than last year" and "performance in the second half-year is expected to be similar to our performance and results in the first half-year" (when interim figures have already been published). In cases of doubt, professional advisers should consult the Panel in advance.~~

~~*Interim and preliminary*~~ *Interim and Preliminary figures*

If a company which is not quoted on ~~*the*~~ *a Stock Exchange wishes to take advantage of the exemptions under* ~~*subparagraphs (d)(ii), (iii) or (iv)*~~*Rule 28.5, it should consult the Panel in advance.*

NOTE ON RULE 28.6

Cost saving measures announced before the offer period

(a) Cost saving measures published by the offeree prior to the offer period are not subject to Rule 28, even if they are repeated by the offeree during the offer period. However, if, during the offer period, the offeree revises any cost saving measures published prior to the offer period, the revised cost saving measures will be treated as a quantified financial benefits statement, such that Rule 28.1(a) will then apply.

(b) The Panel should be consulted if an offeree proposes to publish a statement with regard to new cost saving measures after it has received an approach but prior to the commencement of an offer period. If the Panel considers that the new cost saving measures are being published as a result of the approach, it may direct that the statement should be repeated during the offer period and treated as a quantified financial benefits statement.

NOTE ON RULE 28.7

Exceptional Circumstances

In certain exceptional circumstances, the Panel may consider waiving the requirements of Rule 28.7 to allow an investment analyst's forecast to be excluded from the forecasts on the company's website where it is wholly anomalous or has been prepared on a wholly different basis from that of the other investment analysts. Where a waiver is granted, the Panel is likely to require an explanation to be stated on the company's website.

NOTES ON RULE 29

NOTES ON RULE 29.1

1. Ownership of the assets

Rule 29.1(a) applies in relation to a valuation of assets given by or on behalf of an offeror or an offeree in connection with an offer or contemplated offer whether the assets are owned by them or not.

2. Repetition of a valuation

Rule 29 applies where, in connection with an offer or contemplated offer, an offeror or offeree repeats a valuation published by it prior to the commencement of the offer period or where it draws attention to such valuation in that context. In such circumstances the valuation must be supported by a valuation report of a named independent valuer who meets the requirements of Rule 29.2.

3. Net Asset Values

Where an offeree or offeror gives a net asset value or an adjusted net asset value, Rule 29 requires a valuation in respect of the underlying assets. In addition, any document or announcement published by the offeree or the offeror which includes that net asset value or adjusted net asset value must clearly set out any adjustments which have been made to the valuation of the underlying assets in order to calculate that net asset value or adjusted net asset value.

4. Profit Forecasts

If the publication of information contained in a valuation report could constitute a profit forecast, the Panel must be consulted in advance.

~~*1.*~~*5. Waiver in certain circumstances*

In exceptional cases, certain companies, in particular property companies, which are the subject of an unexpected offer may find difficulty in obtaining, within the time available, the opinion of an independent valuer to support an asset valuation, as required by Rule 29, before the board's circular has to be sent out. In such cases, the Panel may be prepared exceptionally to waive strict compliance with this requirement if, for example, the interests of shareholders seem on balance to be best served by permitting informal valuations to appear coupled with such substantiation as is available. Advisers to offerees who wish to make use of this procedure should consult the Panel at the earliest opportunity.

NOTES ON RULE 29.2

1. Independence

Factors which the Panel may take into account when considering whether a valuer is "independent" of the parties to the offer include: (i) the absence of any material connection between the valuer and any party to the offer; and (ii) the valuer being considered by its own professional standards to be independent and/or not in breach of its own professional standards by carrying out the valuation.

2. Qualifications

Membership of an appropriate professional body will be an indicator that a valuer is appropriately qualified. In the case of a valuation of land, buildings or plant and machinery, this might include The Society of Chartered Surveyors or The Institute of Professional Auctioneers and Valuers or any other person approved by the Panel for the purpose.

NOTES ON RULE 29.3

~~*2.*~~*1. Valuation by sample*

In exceptional cases in which it will not be possible for a valuer to complete a full valuation of every property within the available time, the Panel may be prepared to regard the requirements of this Rule as met if the valuer carries out a valuation of a representative sample of properties and certifies those valuations, with the directors taking sole responsibility for an estimate, based on the sample, to cover the remaining properties. This procedure shall be permitted only if the portfolio as a whole is within the knowledge of the valuer, who shall also certify the representative nature of the sample. If this procedure is followed, the document sent to shareholders must distinguish between properties valued

professionally and those in respect of which the directors have made estimates on the basis of the sample valuation and must also compare such estimates and the certified values with the respective book values.

2. Qualifications and Assumptions

Only in exceptional circumstances will the Panel consent to the basis of valuation being qualified and in that event the independent valuer will be required to explain the meaning of the words used.

The Panel is unlikely to consent to the making of special assumptions (e.g., an assumption that assumes facts that differ from the actual facts existing at the date of the valuation or which would not be made by a typical market participant in a transaction on the date of the valuation).

The Panel should be consulted if any doubt exists as to whether an assumption might be inconsistent with the established and professional valuation practices in the relevant jurisdiction.

NOTE ON RULE 30

~~Despatch~~ *Sending or making available on a website of documents or information*

The Panel will not normally be in a position to grant any derogation or waiver in relation to the requirement to ~~despatch~~ send or make available on a website documents or information to shareholders or ~~(in the case of a takeover bid)~~ employee representatives or employees of the offeree who are located within the EEA.

Where the Rules require a person to provide or make available on a website documents or information to representatives of employees or to employees and such person considers that circumstances outside its control may prevent full compliance, such person should consult the Panel, which may specify further action.

NOTES ON RULE 31

NOTE ON RULE 31.3

Suspension of offer time-table

The Panel may on occasion consider it appropriate to suspend the time- table of an offer pending a determination by the Panel or other authority, or other event of importance in the context of the offer.

NOTE ON RULE 31.4(b)

Competition involving takeover schemes

The posting of a takeover scheme circular does not establish a timetable under the Rules in the same way as the posting of an offer document as there are no dates in a takeover scheme which are directly equivalent to, for example, "Day 46" or "Day 60" of an offer. Under Rule 32.1(a), an offer may not be revised during the 14 days ending on the final closing date, i.e. Day 60, without the consent of the Panel. Under Section ~~3(9~~3(10) of Appendix 4, a takeover scheme may not be revised during the 14 days ending on the date of the scheme meeting or any related general meeting or following those meetings, without the consent of the Panel.

Where a competitive situation involves one or more takeover schemes, the Panel, having regard to all the relevant circumstances, will determine the appropriate date on which final revisions to the offer and the scheme or to the schemes, as the case may be, must be announced. Following the determination of that date, Rule 32.1(c) may then be relevant.

NOTES ON RULE 31.5~~(a)~~

(See also Rule 31.6)

1. Firm statements

In general, an offeror will be bound by any firm statement by it or on its behalf as to the duration of its offer. Any statement of intention will be regarded for this purpose as a firm statement; expressions such as "present intention" should not be used as they may be misleading to shareholders.

~~*2. Consent of the Panel*~~

~~The~~ *After an offeror has made a no extension statement, the Panel will not grant its consent to the extension of the offer if the offeror has not specifically reserved the right to do so in the no extension statement except where ~~it~~ the Panel considers that, having regard to the General Principles, there are exceptional circumstances which render it appropriate to do so.*

2. Reservations

The Panel's consent is required to the inclusion of a reservation to a no extension statement. The Panel will, in particular, assess whether a proposed reservation meets the requirements of Rule 31.5(e).

NOTES ON RULE 31.6(a)

~~1.~~1. Panel consent under Rule 31.6(a)(i)

The Panel may consider granting its consent in circumstances such as the following:

~~(a)~~(a) if there is a matter outstanding under the rules on the final closing date; or

~~(b)~~(b) if the offeree board consents to an extension; or

~~(c)~~(c) as provided for in the Note on Rule 31.9; or

~~(d)~~(d) if the offeror's receiving agent requests an extension for the purposes of complying with Rule 10.6.

Where the Panel consents under Rule 31.6(a)(i) to any such extension of Day 60, it will normally also grant an extension to or, if appropriate, re-set Day 39 (see Rule 31.9), Day 46 (see Rule 32.1(a) and Day 53 (see Rules 2.6(d) and (e)).

Where the final closing date is extended due to circumstances ~~prevailing on that date~~set out in paragraph (a) above, , the Panel will not normally permit any extension of the time for receipt of documents or withdrawals of acceptances, as referred to in Rules 31.6(a)(ii) and 34.

~~2.~~2. Extension of 1.00 p.m. deadline under Rule 31.6(a)(ii)

Consent to such an extension will normally be given if the 5.00 p.m. deadline in Rule 31.6(a)(i) is extended with the consent of the Panel in the circumstances set out in paragraphs (a) to (c) of Note 1 but will otherwise be given only exceptionally.

3. European Commission

If there is a significant delay in the decision by the European Commission on whether or not there is to be an initiation of proceedings in relation to an offer under Article 6(1)(c) of the European Merger Regulation or a referral of the offer under Article 9(1) of that Regulation, the Panel may extend the 39th day (see Rule 31.9) to the second day following the announcement of such decision, with consequent changes to the last day on which the offer may be revised for the purpose of Rule 32.1 and the final closing date.

4. Extension of Day 60 after Day 46

The Panel will normally grant an extension to Day 60 (with a corresponding extension to, or re-setting of, Day 46) of an offeror's timetable where the board of the offeree consents to such an extension. Therefore, provided that such consent is obtained, and subject to no unreserved "no extension statement" (see Rule 31.5) or "no increase statement" (see Rule 32.2) having been made, the offeror will normally be able to revise its offer, notwithstanding that the original Day 46 has passed.

NOTE ON RULE 31.6(b)

5.00 p.m. announcement

Under Rule 31.6(b), an announcement as to whether the offer is unconditional as to acceptances or has lapsed should be made by 5.00 p.m. on the final closing date. This requirement should not be reflected in the terms of the offer pursuant to Rule ~~24.6~~24.7, but, if there is any question of a delay in the announcement required by Rule 31.6(b), the Panel should be consulted as soon as practicable. Only in exceptional circumstances will the Panel agree to an offeror's request that this announcement may be made after 5.00 p.m.

NOTE ON RULE 31.7

The effect of lapsing

The offer document must make clear that the reference to the offer lapsing means not only that the offer will cease to be capable of further acceptance but also that shareholders and the offeror will thereafter cease to be bound by prior acceptances.

NOTE ON RULE 31.9

If the announcement would normally take place after the 39th day, the offeree board should use all reasonable endeavours to bring forward the date of the announcement, but, if the Panel is satisfied that this is not practicable, it may give its consent to a later announcement. If an announcement of the kind referred to in Rule 31.9 is made after the 39th day, the Panel may be prepared to consent to a final closing date later than the 60th day, in which case Day 46 and Day 53 would normally be correspondingly extended.

If the offeree board wishes to obtain the Panel's consent to a later announcement, it should consult the Panel at the earliest possible time.

NOTES ON RULE 32

NOTES ON RULE 32.1

~~*1.*~~*1.* *When revision is required*

An offeror will normally be required to revise its offer if it, or any person acting in concert with it, purchases shares at above the offer price (see Rule 6) or it becomes obliged to introduce a cash offer under Rule 11.1 or to make a cash offer, or to increase an existing cash offer, under Rule 9 or Rule 37.

2. *Triggering Rule 9*

If an offeror, which is making a voluntary offer either in cash or with a cash alternative offer, makes an acquisition of securities in the offeree which causes it to have to extend an offer under Rule 9 at no higher price than the existing cash offer, the change in the nature of the offer will not be viewed as a revision (and will thus not be precluded by an earlier no increase statement), even if the offeror is obliged to waive any outstanding condition, but such an acquisition may be made only if the offer can remain open for acceptance for a further 14 days following the date on which the amended offer document is posted.

This note does not apply to takeover schemes.

See also Rule 9.7.

~~*3. Panel consent*~~

~~The Panel will consider giving consent to an announcement of information such as trading results if it is satisfied that the announcement is proposed to be made in accordance with the offeror's normal timetable for periodic announcements.~~

3. No Increase Statements

Where an offeror, in a securities exchange offer, has made a "no increase statement" prior to Day 46, the Panel will interpret Rule 32.1(b) as applying from the date of the offeror's "no increase statement". Consent is thus required from that date for any announcement of material new information by the offeror which will or might have the effect of increasing the value of the offer. The Panel is likely normally to consent to the issue of announcements up to Day 46 in and relating to the ordinary course of business that the offeror is compelled by law or regulation to release. In such cases the Panel may wish to consult with the relevant regulator to satisfy itself that the particular announcement is in fact required. Corporate actions such as, for example, share buy-back programmes, distributions and material acquisitions/disposals will not normally be consented to after the date of the offeror's "no increase statement". Therefore, offerors should consult with the Panel before they propose to take any such actions.

After Day 46, Panel consent pursuant to Rule 32.1(b) will only be granted in exceptional circumstances.

The Panel should be consulted in good time where it is proposed to release any announcement which may fall within the scope of Rule 32.1(b).

4. Extension of Day 60 after Day 46

See Note 4 to Rule 31.6(a).

NOTES ON RULE 32.2~~(a)~~

1. *Firm statements*

In general, an offeror will be bound by any firm statement made by it or on its behalf as to the finality of the value of its offer or the type of consideration. In this respect, the Panel will treat any indication of finality as absolute, unless the offeror clearly states the circumstances in which the statement will not apply. The Panel will not distinguish between the precise words chosen, i.e. the offer is "final" or will not be "increased", "amended", "revised", "improved", "changed", and similar expressions will all be treated in the same way. Any statement of intention will be regarded for this purpose as a firm statement; expressions such as "present intention" should not be used as they may be misleading to shareholders.

~~*2. Consent of the Panel*~~

~~The~~ *After an offeror has made a no increase statement, the Panel will not grant its consent to the amendment of the terms of the offer, if the offeror has not specifically reserved the right to do so in the no increase statement, except where it considers that, having regard to the General Principles, there are exceptional circumstances which render it appropriate to do so.*

3. Switching to or from a scheme

See note 3 on Rule 41.3.

4. Dividends

Where an offeror has made a no increase statement and a dividend (or other distribution) is subsequently paid or becomes payable by the offeree to offeree shareholders, the offeror will normally be required to reduce the offer consideration by an amount equal to the dividend (or other distribution) so that the overall value receivable by offeree shareholders remains the same, unless, and to the extent that the offeror has stated that offeree shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.

5. Reservations

The Panel's consent is required to the inclusion of a reservation to a no increase statement. The Panel will, in particular, assess whether a proposed reservation meets the requirements of Rule 32.2(e).

NOTE ON RULE 33

Reintroduction of alternative offer

Reintroduction would constitute a revision of the offer and would, therefore, be subject to the requirements of, and only be permitted as provided in, Rule 32.

NOTE ON RULE 34

Further right of withdrawal See Rule 17.2.

NOTES ON RULE 35

~~NOTE~~ *NOTES ON RULE 35.1*

1. When derogations may be granted

~~(a)~~(a) The Panel may consider granting consent under Rule 35.1 if:

~~(i)~~(i) the new offer is recommended by the offeree board. Such consent will not normally be granted within three months after the lapsing of an earlier offer in circumstances in which the offeror was prevented from revising or extending its previous offer as a result of a no increase statement or no extension statement; or

~~(ii)~~(ii) the new offer follows the announcement by a third party of a firm intention to make an offer in respect of the offeree; ~~or~~

~~(iii)~~(iii) the new offer follows the announcement by the offeree of a "whitewash" proposal (see the Whitewash Guidance Note in the Notes on Rule 9) or of a reverse takeover transaction which has not failed or lapsed or been withdrawn~~.~~; or

(iv) the Panel determines that there has been a material change of circumstances.

~~(b)~~(b) The Panel may also consider granting consent under Rule 35.1 in circumstances in which it is likely to prove, or has proved, impossible to obtain material governmental or regulatory clearances relating to an offer within the timetable laid down by the Rules. The Panel should be consulted by an offeror as soon as it has reason to believe that this may become the position.

~~(c)~~(c) Every switch under Rule 41.3 is also likely to require the Panel's consent under Rule 35.1. In deciding whether to grant consent to a switch under Rule 41.3, the Panel will also take into account any factors that may be relevant in the context of Rule 35.1. See Note 2 on Rule 41.3.

2. Entering into talks during a restricted period

The Panel will normally apply the same approach to Rule 35.1(f) as that set out in note 5 on Rule 2.8.

3. Significant asset purchases

The Panel will normally apply the same approach to Rule 35.1(g) as that set out in note 4 on Rule 2.8.

NOTES ON RULE 36

NOTES ON RULE 36.1

~~1.~~1. *Use of tender offers*

Where a proposed offer would constitute a substantial acquisition of securities, the Panel may consent to the making of a tender offer as an alternative to a partial offer. A tender offer of a proposed size which would not constitute a takeover or other relevant transaction would not require Panel consent. See Rule 7 of the Substantial Acquisition Rules.

~~2.~~2. *Buying before the partial offer*

In the case of an offer which, if successful, would result in the offeror and persons acting in concert with it holding securities conferring 30% or more but less than 100% of the voting rights in a relevant company, the consent of the Panel may not be granted if, for example, the offeror or persons acting in concert with it have acquired, selectively or in significant numbers, voting securities of the offeree during the 12 months preceding the application for consent or if such securities have been purchased at any time which the Panel considers to be after the partial offer was reasonably in contemplation.

3. Partial offer resulting in a holding of less than 30%

Panel consent is likely to be granted in the case of an offer which could not result in the offeror and any persons acting in concert with it holding securities conferring in the aggregate 30% or more of the voting rights in the offeree.

NOTES ON RULE 36.2

~~1.~~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.)

~~2.~~2. *Partial offer resulting in less than 30%*

The Panel may consider granting consent under Rule 36.2(b) following a partial offer which could only have resulted in a holding conferring less than 30% of the voting rights in a relevant company. The Panel may consider granting consent under Rule 36.2(b) for purchases of securities within 12 months after the end of the offer period if a partial offer which could have resulted in a holding conferring more than 30% of the voting rights in the relevant company has resulted in a holding conferring less than 30% of the voting rights in ~~a relevant~~ that company. The provisions of Rule 9 and the Substantial Acquisition Rules may be relevant in such cases.

~~*3. Negative statements under Rule 36.2(d)*~~

~~See Rule 2.8 in relation to statements by a person that he does not intend to make an offer.~~

NOTES ON RULE 36.4

~~1.~~1. *Mode of shareholder approval*

Such approval is normally signified by the ticking of a separate box on the form of acceptance or the equivalent for an electronic message.

2. *Waiver of requirement*

The Panel will consider waiving the requirement for majority approval if over 50% of the voting rights of the offeree are held by a single shareholder (including persons regarded as such for the purposes of Rule 5.1(a)(ii)).

3. *Rule 36.2 (c~~) and (d~~)*

The note on Rule 35.1 may be relevant.

NOTES ON RULE 37

~~1.~~1. *Prior consultation*

A number of problems may arise in connection with a redemption or purchase by a relevant company of its own voting securities. The significance of these problems may depend, for instance, upon the precise number of voting securities held by the directors and persons acting in concert with them (including persons presumed to be so acting under Rule 3.3(b) of Part A or Rule 7.2) and the amount of the proposed redemption or purchase. Under Rule 3.3(b)(vi) of Part A, the directors of a relevant company and certain connected persons are presumed to be acting in concert, until the contrary is established to the satisfaction of the Panel, whilst a relevant company is in the course of redeeming or purchasing its own voting securities, or whilst its directors propose that the company redeem or purchase its own voting securities. The Panel should be consulted in any case where a relevant company proposes to make purchases which may result in a requirement for a general offer under Rule 37(a) or where there is doubt as to the status of persons under this Rule.

~~2.~~2. *Vote of independent shareholders*

When a redemption or purchase by a company of its own securities would otherwise result in an obligation to make a general offer under Rule 37, the Panel may in certain circumstances waive the obligation if there is an independent vote at a shareholders' meeting. In this context, the Whitewash Guidance Note relating to waiver of the obligation to make an offer under Rule 9 in certain circumstances may be similarly applicable.

3. *Renewals*

Any waiver previously obtained under this Rule must (whether or not voting securities have in fact been redeemed or purchased by the relevant company concerned) be renewed at the same time as shareholders' authority is renewed under~~.~~, as applicable, sections ~~212 to 214~~ 105 and 1072 to 1075 of the Companies Act, ~~1990~~2014.

4. *Disqualifying transactions*

Notwithstanding that the redemption or purchase by a relevant company of its own voting securities is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company:

~~(a)~~(a) the Panel may be unwilling to waive an obligation to make an offer under Rule 37(a) if the ~~directors~~ relevant person or persons acting in concert with them have acquired voting securities in the company in the knowledge that the company intended to seek permission from its shareholders to redeem or purchase its own securities; and

~~(b)~~(b) a waiver may be invalidated if any purchases of voting securities in the company are made by the ~~directors~~ relevant person or persons acting in concert with them in the period between the ~~despatch~~ sending of the circular to shareholders and the shareholders' meeting.

5. *Rule 9*

Subsequent to the redemption or purchase by a relevant company of voting securities, all shareholders will be subject, in making acquisitions of securities in the company, to the provisions of Rule 9.1.

~~*6. Position of directors*~~

~~Under Rule 3.3(b)(vi) of Part A, the directors of a relevant company and certain connected persons are presumed to be acting in concert, until the contrary is established to the satisfaction of the Panel, whilst a relevant company is in the course of redeeming or purchasing its own voting securities, or whilst its directors propose that the company redeem or purchase its own voting securities. The Panel should be consulted in any case where there is doubt as to the status of persons under this Rule.~~

6. *Offer period*

See definition of "offer period", in relation to the commencement date of an offer period for the purposes of Rule 37(b), where an offer has lapsed pursuant to Rule 12(b)(i).

NOTES ON RULE 38

NOTE ON RULE 38.1

Implications of breach

Any dealings by an exempt principal trader connected with an offeror or the offeree with the purpose of assisting an offeror or the offeree, as the case may be, will constitute a serious breach of the Rules. Accordingly, if the Panel determines that a principal trader has carried out such dealings, it will be prepared to rule that the principal trader shall cease to enjoy exempt status for such period of time as the Panel may consider appropriate in the circumstances.

NOTE ON RULE 38.2

Responsibility for compliance

It will generally be for the offeror and its advisers rather than the principal trader to ensure compliance with Rule 38.2.

See also Rule 4.2(b).

NOTES ON RULE 38.5

~~1.~~1. *Rule 8*

See Note ~~3~~ 4 on Rule 8.

~~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.

NOTE ON RULE 39

Conditions imposed by the Panel

Where the Panel consents to a dual-company transaction, any conditions which it imposes are likely to be influenced by the structure of the proposed transaction, but would normally be framed to give shareholders of any relevant company concerned a comparable level of protection to that which the Takeover Rules would afford in the case of a conventional offer.

NOTE ON RULE 40

Conditions and other requirements

The conditions imposed by the Panel under Rule 40.1(a) will normally reflect the content of the Whitewash Guidance Note on Rule 9. The requirements of the Panel under Rule 40.1(b) will normally relate to the satisfaction of the intent of relevant Rules, having regard to the fact that the proposed transaction would result in the existing shareholders in the acquirer becoming a minority. See the definition of "reverse takeover transaction" in Rule 2.1(a) of Part A and the provisions relating to independent advice in Rule 3.2.

NOTES ON RULE 41

NOTE ON RULE 41.1

1. Panel review of documents

The Panel Executive may review and comment on documents provided to the Panel under Rule 41.1 but such review and comment shall not be considered to constitute approval of any such document for any purpose of the Rules and the fact that the Panel Executive has or has not reviewed or commented on any such document shall not limit the statutory rights of the Panel.

NOTES ON RULE 41.3

~~1.~~1. Determination of the scheme or offer timetable following a switch

Factors which the Panel may take into account when determining the scheme or offer timetable that will apply following a switch include:

~~(a)~~(a) the time required to enable shareholders in the offeree or acquiree to reach a properly informed decision;

~~(b)~~(b) the time which has elapsed since the switching offeror's or acquirer's original announcement under Rule ~~2.5~~ 2.7 and the extent to which it is reasonable for the offeree or acquiree board to be hindered in the conduct of its affairs;

~~(c)~~(c) the views of the offeree or acquiree board and the switching offeror or acquirer; and

~~(d)~~(d) the likely effect of the new offer timetable on any competing offeror or acquirer.

2. Rule 35.1

When an offeror or acquirer seeks the consent of the Panel to a switch, it should at the same time request any appropriate consent under Rule 35.1.

~~3.~~3. Switches not precluded by no increase statement

A switch to or from a takeover scheme will not normally, of itself, be regarded as an amendment that would be precluded by an earlier no increase statement in relation to the value or type of consideration offered. Accordingly, it will not be necessary for an offeror or acquirer making such a statement to reserve specifically the right to switch from one structure to the other.

~~4.~~4. Panel consent to switches

In considering whether to consent to a proposed switch, the Panel will have regard primarily to the effect that the switch is likely to have on the interests of offeree or acquiree shareholders. The views of the offeree or acquiree board and its Rule 3 adviser as to the effect of the proposed switch on the interests of those shareholders will be a relevant factor in the Panel's determination as to whether to grant its consent.

NOTE ON APPENDIX 1

GENERAL NOTE

It is essential when determining the result of an offer under these Rules that such appropriate measures are adopted that all parties to the offer may be confident that the result of the offer is arrived at by an objective procedure which, as far as possible, eliminates areas of doubt. The procedures set out in Appendix 1 are designed to ensure that those acceptances and purchases which may be counted towards fulfilling the acceptance condition and thus included in the certificate required by Rule 10.6 are properly identified to enable the receiving agent to provide the certificate. Receiving agents are also required to establish such appropriate procedures that acceptances and purchases can be checked against each other and between different categories without any shareholding being counted twice.

The principles and procedures outlined in Appendix 1 must, except with the consent of the Panel, be followed in all cases. The Panel expects ~~co~~ co-operation between the offeree's registrar and the offeror's receiving agent to ensure that the procedures can be undertaken in a timely manner. Whenever possible, if requested to do so, the registrar must provide, in appropriate form, details of changes to the register rather than a complete new register.

Receiving agents will have direct access to the Panel if they believe that there is insufficient co-operation or that they are being given instructions contrary to the terms of Appendix 1.

Appendix 1 should be read in conjunction with Rules 9.2 and 10 and, in particular, Rules 10.3 to 10.6.

NOTES ON APPENDIX 2

NOTE ON PARAGRAPH 2

Method of calculating net asset value

The Panel does not consider it appropriate to insist on a standard method of calculating net asset values in formula offers. There is, however, a danger of confusion arising in the minds of shareholders if they are asked to consider the advantages or disadvantages of an offer by reference to net asset values which are calculated by each side on a different basis. Principals and their advisers must, therefore, ensure that wherever reference is to be made to net asset value as an argument for or against an offer, the utmost clarity is used to make plain the basis of calculation. This applies to advertisements as well as to documents addressed to shareholders directly.

NOTE ON PARAGRAPH 9

Co-operation in determining price, after unconditionality

If agreement between the offeror and the offeree is not forthcoming the offeror should not determine unilaterally the price payable. Where such circumstances could arise, the offer should provide for an interim payment to be made to accepting shareholders of not less than 85% of the offeror's best estimate of the formula price payable. When the offeror is able to calculate correctly the price payable, the difference should be paid to accepting shareholders as soon as possible; any excess paid to shareholders as a result of an over-estimate of the formula asset value should not be recoverable.

NOTE ON APPENDIX 4

Section 4

NOTE ON RULE (1)

Triggering Rule 9

During the course of a takeover scheme, the acquirer or a person acting in concert with it may acquire an interest in shares that requires it to extend a mandatory offer under Rule 9 only if the acquirer has obtained the Panel's prior consent to switch from a scheme to an offer. (See Rule 41.3.)

SUBSTANTIAL ACQUISITION RULES

INTRODUCTION

1 BACKGROUND

The Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, ~~2007~~ [•] (the "SARs") are made by the Irish Takeover Panel (the "Panel") pursuant to the provisions of section 8(2) of the Irish Takeover Panel Act, 1997 (the "Act") and were approved in ~~2007~~ [•] by the ~~then~~ Minister for Enterprise, Trade and Employment as required by the Act. This Introduction and the Notes on the SARs do not constitute a part of the SARs as such nor do they constitute a legal interpretation of the SARs. The SARs are administered by the Panel together with the Irish Takeover Panel Act, 1997, Takeover Rules, ~~2013~~ [•] (the "Takeover Rules"). The Panel Executive is available for consultation on the application of the SARs, and rulings and directions relative to the SARs will be given by the Panel on application by interested parties or on its own initiative.

~~References in the SARs and in these Notes to the "Takeover Rules" are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2007, as originally made, and exclusive of all amending and superseding takeover rules subsequently made by the Panel.~~

The SARs do not apply to those relevant companies that fall within the Panel's jurisdiction solely as a result of the Regulations.

~~2.~~2. SCOPE OF THE SARs

Subject to certain exceptions, the SARs restrict the speed with which a person may increase a holding of voting securities, and rights over voting securities, of a relevant company to an aggregate of between 15% and 30% of the voting rights of a relevant company as defined in the Act. The SARs also require accelerated disclosure of acquisitions of voting securities, or rights over voting securities, relating to such holdings.

The SARs do not apply to an acquisition of securities of a relevant company by a person:

~~*(a)*~~(a) who has announced a firm intention to make an offer under the Takeover Rules for the company concerned~~, *where the despatch of the offer is not, or has ceased to be, subject to a pre-condition*~~. A person who makes such an announcement is subject to the Takeover Rules, and not to the SARs, in respect of acquisitions during the course of the offer; or

~~*(b)*~~(b) which results in his holding voting securities or rights over voting securities which when aggregated with any voting securities, and any voting securities the subject of rights, held by parties acting in concert with him, carrying 30% or more of the voting rights of the company. Such a person will be subject to the provisions of Rule 5 of the Takeover Rules and will, if appropriate, be obliged to make a mandatory offer under Rule 9 of the Takeover Rules.

3. PROCEDURES

The procedures of the Panel in relation to administration of the SARs are similar to those set out in the introduction to the Takeover Rules.

4. TENDER OFFERS

Certain tender offers come within the scope of the SARs, and Rule 7 of the SARs governs these offers. ~~The Irish Stock Exchange gives detailed guidance on the procedures for tender offers in respect of securities authorised for trading on that exchange.~~

NOTES ON THE IRISH TAKEOVER PANEL ACT, 1997, SUBSTANTIAL ACQUISITION RULES, ~~2007~~[•]

These Notes do not constitute a part of the SARs nor do they constitute a legal interpretation of the SARs. These Notes are intended merely to provide an indication for practitioners as to some of the considerations to which the Panel may have regard in the application of the SARs. In particular, these Notes should in no way be interpreted as prescribing the circumstances in which any discretion of the Panel under the Act will or may be exercised. The Panel emphasises that nothing in these Notes is intended in any way to restrict or fetter the manner in which any of its discretionary powers is exercised.

NOTES ON RULE 3

~~1.~~1. "Acting in concert" (Act definition), "rights" over voting securities and "voting securities".

See Notes 1, ~~14~~ 15 and ~~17~~ 18 on Rule 2.1 of Part A of the Takeover Rules.

~~2.~~2. The 7 day period - aggregation

~~(a)~~(a) It is necessary for a person, before making an acquisition of voting securities of a relevant company, or of rights over such securities, on any day, to identify and aggregate the acquisitions of such securities of that company made by him or her (or persons acting in concert with him or her) in the preceding 6 days with the acquisition about to be made and any other acquisitions already made by him or her on that day. If the aggregate would represent less than 10% of the total voting rights, the proposed acquisition may be made; if the percentage would be 10% or more and, when aggregated with the voting rights attributable to the voting securities, and the voting securities the subject of rights, already held by him or her (or persons acting in concert with him or her), would be 15% or more but less than 30% of the total voting rights, the proposed acquisition may not be made unless it falls within one of the exceptions permitted by Rule 5.

~~(b)~~(b) The thresholds of 10%, 15% and 30% in the SARs relate to voting securities and also to rights over voting securities, even where such rights do not confer control of the votes attaching to the securities concerned.

3. Issued share capital

Calculations must be made by reference to the voting rights attributable to the securities of the company concerned in issue at the time of the acquisition.

4. Investment managers

The Panel will normally accept that a fund manager forming part of a group of companies is not acting in concert with any company controlling, controlled by or under the same control as the fund manager if it is established to the Panel's satisfaction that the fund manager is operating independently and without regard to the interests of any other part of the group (for example, where, in an offer, the fund manager would have exempt status for the purposes of the Takeover Rules).

NOTE ON RULE 4

Persons acting in concert

Subject to the proviso in Rule 3(b)(i), such persons are deemed to be one person, and each of them is subject to the restriction imposed by Rule 4. (See Rules 3 and 8(a) and Note 2 on Rule 5.)

NOTES ON RULE 5

~~1.~~1. When 30% or more is held

The Substantial Acquisition Rules are not relevant to an acquisition by a person of voting securities or rights over voting securities if the voting rights conferred by the voting securities so acquired or by the voting securities the subject of the rights so acquired, when aggregated with the voting rights conferred by any voting securities, and by the voting securities the subject of any rights, already held by that person or persons acting in concert with that person, would amount to 30% or more of the total voting rights in the company.

~~2.~~2. Single holder of securities

The holdings of two or more holders of securities acting in concert who are deemed by Rule 3 to be one person will not be considered to be the holding of a single holder for the purposes of Rule 5(a)(i) unless the holders concerned fall within Rule 5(b).

For the purposes of Rule 5(b)(i), the Panel will normally consent to the inclusion in family holdings of securities held by a company wholly owned and controlled by qualifying family members, or by trustees of a trust whose beneficiaries are all qualifying family members. The Panel should be consulted in any such case.

NOTES ON RULE 6

~~*1.*~~1. Persons acting in concert

Where such persons are deemed by Rule 3 to be one person, each of them is bound by the disclosure obligation. (See Rules 3 and 8(a).)

2. Redemption or purchase

Following a redemption or purchase by a company of its own securities, Rule 6(a) will apply to subsequent acquisitions by a person on the basis of the voting rights attributable to the securities of the company concerned in issue at the time of the acquisition (i.e. after taking into account the redemption or purchase).

3. Rule 6(b)

Where disclosure of acquisitions of securities is not required under the provisions of Rule 6(b), there may be a requirement for disclosure under the Takeover Rules.

NOTES ON RULE 7

NOTE ON RULE 7.1

Maximum number of shares

Calculations of the maximum number of shares that are the subject of the offer must be made by reference to the voting rights attributable to the securities of the company concerned in issue at the time of the announcement of the tender offer; if, however, it is known at the time of the announcement that by the closing date of the tender the issued share capital will have changed, this must also be taken into account.

NOTE ON RULE 7.2

If the company is the subject of an offer

If a tender offer is proposed for shares in a company which is the subject of an offer under the Takeover Rules, the matters considered by the Panel may include the following:

~~*(i)*~~(i) extension of the offer period in respect of the offer under the Takeover Rules;

~~*(ii)*~~(ii) circulation of the tender advertisement to all shareholders; and

~~*(iii)*~~(iii) disclosure of dealings by the person making the tender offer and any ~~*associates*~~ persons acting in concert with that person in the manner set out in Rule 8 of Part B of the Takeover Rules.

NOTES ON RULE 7.3

1. Void tenders

Subject to any applicable Stock Exchange approval, the buyer will be allowed to specify in its tender offer a percentage higher than 1% below which the tender will be void. ~~The Irish Stock Exchange has indicated that, in tender offers on the market, it will not normally permit any figure higher than 5%.~~

2. Future offers

If a buyer makes a statement which states or implies that it does not intend to make an offer in respect of the company concerned, he or she will not normally be permitted by the Panel to ~~despatch~~ send such an offer to shareholders within 12 months of the date of the statement, unless an offer in respect of that company is announced by a third party within that period.

~~*3.*~~3. Limit on contents of tender advertisements and other information

The limit on the amount of information permissible in tender advertisements is strictly enforced; no form of argument or persuasion is allowed.

Consequently, neither the buyer nor its advisers may make any statement or otherwise make public any information in connection with the tender offer which is not already contained in the tender offer advertisement itself. Furthermore, no private or public release by the buyer of relevant information not in the public domain is permitted.

NOTE ON RULE 7.6

Persons acting in concert

This prohibition also applies to persons acting in concert with the person seeking to purchase securities under the tender offer.