IRISH TAKEOVER PANEL

PUBLIC CONSULTATION PAPER

PROPOSALS TO AMEND THE TAKEOVER RULES AND THE SUBSTANTIAL ACQUISITION RULES

21 December, 2021

CONTENTS **Page**

Introduction

This paper sets out proposals to amend the Irish Takeover Panel Act 1997, Takeover Rules, 2013 (the "Rules") and the Irish Takeover Panel Act 1997, Substantial Acquisition Rules, 2007 (the "SARs").

The primary purpose of the proposed amendments to the Rules and the SARs is to update them to take into account developments in takeover practice and changes in relevant legislation that have occurred since the Rules and the SARs were published.

In undertaking its review of the Rules, the Panel has considered amendments made to the Takeover Code by the Panel on Takeovers and Mergers in the UK (the "Code") in recent years and the vast majority of the proposed amendments to the Rules reflect changes that have been made to the Code during this period.

Having regard to the above, this paper refers only to the more substantive amendments being proposed to the Rules, the SARs and accompanying notes, including those amendments which the Panel regards as giving rise to changes in policy. Minor amendments including rule numbering changes, typographical errors and simple linguistic changes are not referenced. Complete sets of the proposed new Rules and SARs (and the notes thereon) marked-up to show the proposed amendments are set out in the Appendices to this paper.

The Panel is inviting comments on this consultation paper. Any comments should reach the Panel by 28 February, 2022.

Comments may be sent by email to: admin@irishtakeoverpanel.ie

Alternatively, comments may be sent in writing to:

Irish Takeover Panel
Lower Ground Floor
76 Merrion Square
Dublin 2

Telephone: +353 1 6789020

All rule and note references are to the new rules and notes thereon unless otherwise stated. Unless the context otherwise requires, words and expressions defined in the Rules and the SARs have the same meanings when used in this consultation paper.

Proposed Amendments to Part A of the Rules and Related Notes

Rule 2 Interpretation

1.1 Amendments to Rule 2

Rule

2.1 Certain definitions are being deleted while a number of new definitions are being added. For example, because of the proposed amendments to Rule 10 (see below) CREST related definitions are being deleted as is the definition of *"despatch"* because of the proposed amendments to Rule 30 (see below). Because of the latter amendments new definitions of *"electronic form"*, *"hard copy"* and *"website notification"* are being introduced.

New definitions of *"ordinary course profit forecast", "profit forecast", "profit estimate"* and *"Quantified Financial Benefits Statements"* are being introduced which terms are referred to in a new Rule 28 (see below).

The definition of *"dealing"* is being amended with the addition of a new sub-paragraph (vii) which will extend the definition to include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree or an offeror.

The definition in Rule 2.1(b)(v) of a service contract which has more than 12 months to run is being deleted because of the proposed amendments to Rule 25.5 (the current Rule 25.4).

2.4 Because of the proposed amendments to Rule 30, the current Rule 2.4(a) is being deleted while paragraph (b) of the rule is being moved to Rule 30.4(b).

1.2 Amendments to the Notes on Rule 2

Note 1 on Rule 2.1

A number of amendments are being proposed to note 1 in order to provide additional guidance in relation to acting in concert issues which may arise in the context of standstill agreements, pension schemes, sub-contracted fund managers and irrevocable commitments.

Note 10 on Rule 2.1

This new note on quantified financial benefits statements is being added to clarify that 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.

Note 16 on Rule 2.1

Note 16 (the current note 15) on *"security"* is being amended to clarify inter alia that rights in respect of shares conferring voting rights held through the Euroclear Bank, DTC or other settlement systems are securities and transferable voting securities.

Note on Rule 2.4

As referred to above, the current Rule 2.4 is being deleted and therefore the note on the rule is also being deleted.

2. Rule 3 Specifications and Presumptions

2.1 Amendments to Rule 3

Rule

3.3 Those presumptions which presume close family members as being in concert with each other are being extended to include civil partners and cohabitants (within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) and Rule 3.3(b)(ii),(vi) and (vii) are being amended accordingly.

A new presumption (viii) is being added which will presume that persons who sell assets (other than quoted securities) to a relevant company in consideration for the issue of new shares in the relevant company to them, are acting in concert with each other.

2.2 Amendments to the Notes on Rule 3.3

Note on Rule 3.3

The last paragraph of the note on the rule is being amended to reflect current practice.

Proposed Amendments to Part B of the Rules and Related Notes

1. Rule 2 Confidential information; the timing and contents of announcements

1.1 Amendments to Rule 2

Rule

2.2(a) The deletion is being proposed on the basis that pre-conditional firm intention announcements are permitted under the Rules (with Panel consent under Rule 13.2) and therefore no distinction for the purposes of Rule 2.2 should be made between firm intention announcements which are pre-conditional and those which are not subject to any pre-condition.

2.2(f) The Panel has decided to change its practice in how it treats certain strategic announcements under Rule 2.2 and specifically, when such announcements should be regarded as commencing an offer period. In some cases, a strategic review announcement will identify an offer for the company as one of the possible outcomes of the strategic review. The Panel is aware that, while the ultimate conclusion of a strategic review might be an offer for the company, an offer may be only one of a number of options being explored by the company and such reviews may take place over a protracted period of time.

It has in these circumstances been the Panel's practice under the Rules not to automatically put the company into an offer period. This practice was adopted on the basis that usually when such an announcement is being made no possible offer has been communicated to the offeree and thus the definition of *"offer period"* has not been triggered per se by the announcement.

Over time it has become apparent that in most cases the offeree's financial advisors will commence approaching potential offerors immediately following the release of the strategic review announcement. Furthermore, in some cases the offeree would prefer to be in an offer period following these announcements as it provides them with greater flexibility in the context of Rule 2.2 (when an announcement is required) in that the offeree will have less constraints in relation to the number of potential offerors which may be approached.

The Panel has concluded that it would be both appropriate and prudent to change its current policy such that the Panel will normally treat a strategic review announcement which refers specifically to an offer as one of the options to be considered under the strategic review, as commencing an offer period in relation to the relevant company.

One of the consequences of this change in policy is that in accordance with Rule 2.4(b) (see below) any potential offeror with which the offeree is in talks, or from which it has received an approach with regard to a possible offer, at the time at which the strategic review announcement is made will be required to be identified and the date on which the deadline set in accordance with Rule 2.6(a) (see below) will expire must be specified in accordance with Rule 2.4(d) (see below), unless the strategic review also incorporates a formal sale process in relation to which the Panel has granted the dispensations referred to in Note 2 on Rule 2.6 (see below).

2.3(b) The amendment seeks to clarify who has responsibility for making an announcement if there is rumour and speculation or there is an anomalous movement in the offeree's share price. A note on Rule 2.3 provides some guidance on the issue.

2.4 & 2.6 These are for the most part new rules and form the basis of a new *"put up or shut up"* ("PUSU") regime. The proposal is to adopt a PUSU regime similar to that under the Code.

The current PUSU regime in the Rules is set out in Rule 2.4(b) and provides the Panel with the discretion to impose a time limit of its choosing by which an offeror must clarify its intentions. The PUSU regime is designed to bring to an end the uncertainty and siege that may exist as a result of the announcement of a possible offer. Such a siege results from the operation of Rule 21.1 during this period which can curtail the offeree's normal business operations. PUSU deadlines are not prescribed under the current Rules and the Panel will impose a PUSU deadline only if it is requested to do so by the offeree. In setting the deadline the Panel seeks to balance the interests of the offeree shareholders in not being deprived of the opportunity to consider the possibility of an offer against the potential damage to the offeree's business as a result of the uncertainty and siege created by the offeror's interest.

The current PUSU regime in the Rules has not caused any significant difficulties to date. That said, in recent years there have been representations to the Panel Executive suggesting that it would be preferable if the Rules adopted a PUSU regime along the lines of that provided for under the Code. The Code PUSU regime has been in place since 2011 and is well tried-and-tested at this stage. The Panel understands that it has been operating satisfactorily.

Under the proposed new PUSU regime an announcement by an offeree which commences an offer period must identify any potential offeror with which the offeree is in talks or from which an approach has been received (there is no such requirement under the current PUSU regime). Having been so identified, any publicly named potential offeror must within 28 days of the date on which it has been publicly named:

(i) announce a firm intention to make an offer;

(ii) announce that it will not make an offer whereupon it will then be subject to the restrictions referred to in Rule 2.8; or

(iii) make an application jointly with the offeree to the Panel for an extension of the deadline. Where such an extension is granted the offeree must promptly make an announcement setting out the new deadline, the status of the negotiations between the offeree and the potential offeror and the anticipated timetable for their completion.

The new PUSU regime would reduce any tactical advantage which unwanted and hostile offerors would have over offerees, in that:

- offerees would be subject to a shorter period of uncertainty and disruption prior to a formal offer being announced and would have a greater degree of control over the duration of that period;

- the requirement for the board of the offeree to make a potentially difficult and contentious decision as to whether to identify a potential offeror and/or to request the Panel to impose a PUSU deadline, would be removed; and

- on the basis that the commencement of the offer period would result in the imposition of a 28-day deadline by which the offeror must, in the absence of the offeree requesting an extension of the deadline, release a firm intention announcement, an offeror would have a strong incentive to avoid a leak of its potential interest in making an offer.

Having regard to the matters referred to above, the Panel considers that it would be appropriate at this stage for the Rules to adopt a revised PUSU regime similar to that operated under the Code.

The current Rule 2.4(b) containing the PUSU regime has been deleted as have parts of the current Rule 2.4(a) while other parts of Rule 2.4 have been moved to Rule 2.5 (see below). Rules 2.4(b)-(d) set out how certain aspects of the new regime will operate including the requirement, as referred to above, that an announcement by an offeree which commences an offer period must identify any potential offeror with which it is in talks or from which an approach has been received.

Rule 2.6 sets out the timing following a possible offer announcement. Specifically, it requires, as referred to above, that by no later than the 28th day following the date of the announcement which identifies the offeror, the offeror must either release a firm intention announcement or make a Rule 2.8 announcement (i.e. an announcement that it does not intend to make an offer), unless the Panel has consented to an

extension of the deadline. Paragraphs (d) and (e) of the Rule set out specific deadlines by which a second or subsequent potential offerors must clarify their positions if they have announced that they are considering making an offer or the offeree has publicly referred to the existence of a potential offeror which has not been identified. In the latter case, the effect of the rule would be to impose the restrictions under Rule 2.8 on an unidentified offeror (i.e. an offeror whose identity is known only to the offeree and the Panel) for a period of 12 months. The Panel is of the view that in these circumstances it would normally be inappropriate to force the identity of the offeror into the public domain particularly as the key issue is to end the siege.

The current Rule 2.6 (obligation to despatch announcements) is being moved to Rule 2.10 (see below).

2.5 While this is a new rule specifically addressing terms and pre-conditions in possible offer announcements much of it comes from the current Rule 2.4(c)-(e). Two new sub-rules are being added. Firstly, Rule 2.5(g) requires the offeror to clarify the effect which offeree dividends will have on the offer consideration where the offeror refers in its possible offer statement to the value of the consideration to be paid or that statement relates to the price of a possible offer or a particular exchange ratio in the case of a proposed securities exchange offer. (Note 3 on Rule 2.5 sets out the position with regard to offeree dividends where the offeror has made a *"no increase statement"* in its possible offer announcement.) Secondly, Rule 2.5(j), which is essentially the current note 6 on Rule 2.4 relating to statements by the offeree, has been extended to clarify that certain statements made by the offeree will be treated as if they had been made by the offeror.

2.7 This is essentially the current Rule 2.5 (the announcement of a firm intention to make an offer), with some amendments. Rule 2.7(b)(v) is being amended to also require any pre-conditions to the firm intention announcement (to which the Panel has consented) to be included in the announcement.

Rule 2.7(b)(xiii) will require the offeror to address in the firm intention announcement certain matters (a number of which are provided for in the current Rule 24.1) regarding its intentions for the offeree and its employees. The last paragraph of Rule 2.7(b) requires the offeror to address some of the same issues with respect to itself and its employees. In this context, the Panel has noted the extended time lag that now frequently arises between the publication of the firm intention announcement and the offer document.

Rule 2.7(b)(xiv) now requires an offeror to publish certain documents on a website in accordance with (a revised) Rule 26 while Rule 2.7(b)(xv) is another clarificatory requirement with regard to dividends and their effect on the offer consideration.

The current Rule 2.7 has been moved to Rule 2.11 (see below).

2.8 Rule 2.8(c)(i))(6) has been extended to include tax and accounting advisors within the small circle of people an offeror may consult without breaching the restrictions under Rule 2.8.

An additional prohibition has been added in Rule 2.8(c)(i)(7) to prohibit an offeror who has made a statement that it does not intend to make an offer for an offeree from purchasing, agreeing to purchase, or make any statement which raises the possibility that it is interested in purchasing assets which are significant in relation to the offeree. This amendment is designed to avoid the possibility that an offeror might seek to circumvent the restrictions under Rule 2.8(c)(i) by announcing instead that it was interested in purchasing the assets of the offeree thereby prolonging the siege of the offeree.

Rule 2.8(c)(ii)(1) has been amended to prevent the board of the offeree agreeing to set aside a Rule 2.8 statement where the person who made the statement, or any person acting in concert with it, acquires an interest in any shares in the offeree in the period following the making of the statement but before the extant offer has been withdrawn or lapsed. The purpose of this is to discourage such a person from frustrating that offer.

Rule 2.8(c)(iii) proposes that an offeror which has made a statement in relation to its possible offer terms to which Rule 2.5(c)(i)-(iii) applies, and which did not reserve the right not to be bound to those terms with the agreement of the board of the offeree, and which subsequently makes a Rule 2.8 statement that it does not propose to make an offer, should not be permitted to purchase, agree to purchase, or make any statement which raises or confirms the possibility that it is interested in purchasing assets which are significant in relation to the offeree (as determined in accordance with Note 4 on Rule 2.8) for three months following the date on which the Rule 2.8 statement is made. This will ensure that a person will not be able to avoid restrictions which apply to it under the Rules by purchasing assets which are significant in relation to the offeree. By way of further background, the restrictions under Rule 2.5(c) (the current Rule 2.4(c)(ii)(2)) not only apply during the offer period but under Rule 2.5(f) (the current Rule 2.4(c)(v)) are also applied for a further three months following the end of the offer period or, if earlier, three months following the date on which the offeror made a Rule 2.8 statement. Therefore, Rule 2.8(c)(iii) will prevent a person who has made a Rule 2.8 statement, having previously made a Rule 2.5(a) statement in which it did not reserve the right to set the statement aside with the agreement of the offeree board, from avoiding the application of Rule 2.5(a) by purchasing assets which are significant in relation to the offeree for three months following its Rule 2.8 statement.

2.9 The current Rule 2.9 (mode of announcement) is being deleted as such matters will now be addressed under Rule 30 which will update the position in relation to the making of announcements and distribution of documentation i.e. using electronic communications and websites.

The proposed Rule 2.9 sets out the disclosure requirements in relation to irrevocable commitments and letters of intent. The Rules require details of irrevocable commitments and letters of intent to be disclosed in the firm intention announcement, in the offer document and the offeree circular under current Rules 2.5(b), 24.3 and 25.3 respectively and to be put on display under Rule 26. The requirements under current Rules 24.3 and 25.3 are being deleted and a more comprehensive and timely regime for the disclosure of irrevocable commitments and letters of intent is being set out in Rule 2.9.

2.10 The current Rule 2.6 (obligation to despatch announcements) has been moved to Rule 2.10, with some amendments. Additional requirements are placed on the offeree to distribute the possible offer announcement to employees while the firm intention announcement must now also be sent to the holders of convertible securities etc.. The offeree is also required to inform its shareholders and the holders of convertible securities that it may provide the offeror during the offer period with details of their addresses, electronic addresses etc.

There is also a new requirement under Rule 2.10(c) requiring the offeree to inform employees when providing them with copies of the relevant announcements of their right to have a separate opinion appended to the offeree circular. This right is set out in the current Rule 30.3(b) but there is no obligation on the offeree to inform the employees of this fact.

The references in the current Rule 2.6 to a circular summarising the terms and conditions have been removed as shareholders receive a copy of the firm intention announcement and therefore the summary is considered unnecessary in practice.

2.11 The current Rule 2.7 (consequences of a “firm announcement”) has been moved to Rule 2.11, with some amendments. The introduction in paragraph (a) has been amended to clarify that the obligation on the offeror is to proceed with the offer as set out in the firm intention announcement.

Under Rule 2.11(a)(ii) an additional exception to the general requirement for the offeror to proceed with the offer has been inserted which would permit the offeror not to proceed with the offer if it would be permitted to invoke a condition to the offer in accordance with Rule 13.3, if the offer were to be made.

Rule 2.11(b) has been added to clarify that once an offeror has made a firm intention announcement it will not be permitted to exercise any right it had previously reserved either to reduce the level of consideration or to vary the form and/or mix of the consideration except in relation to dividends in the circumstances provided for in Rule 2.7(b)(xv).

2.12 This is the current Rule 2.10 (announcement of numbers of securities in issue) with some minor amendments.

2.13 This is the current Rule 2.11 (address for service) with some minor amendments.

1.2 Amendments to the Notes on Rule 2

Note 3 on Rule 2.2

The first paragraph of this note is, in effect, drawing a distinction between the requirements under Rule 2.2(c) and (d) in relation to an approach which has been withdrawn prior to the rumour/speculation and/or an anomalous share price movement and one which has been withdrawn after such events. The second paragraph of this note clarifies that a Rule 2.8 announcement will be required if an offeror has withdrawn its approach following rumour/speculation and/or an anomalous share price movement irrespective of how quickly this is done.

Note 4 on Rule 2.2

The note is being amended to provide some further guidance on the number of people who would be permitted to have knowledge that discussions are taking place under Rule 2.2(e). It extends the current note to include tax and accounting advisors as personnel who will not be counted for the purposes of the rule but states that potential providers of finance, shareholders and certain other specified parties will be counted for the purposes of the rule.

Note 6 on Rule 2.2

The note explains the proposed change in Panel policy to the effect that a strategic review announcement will be treated as commencing an offer period if it refers specifically to an offer as one of the options to be considered.

Notes on Rule 2.4

Notes 2,3 and 4 on the current Rule 2.4 are being deleted as they are not relevant in the context of the new PUSU regime.

Note 2 is essentially a cross-reference to the requirements under Rule 7.1(b) for an immediate announcement where an offeror has acquired interests in the relevant securities of the offeree.

Note 3 essentially extends the disclosure requirement for Rule 8.7 arrangements to include any such arrangements which may have been entered into before the offer period or the announcement which first identifies the offeror.

Notes on Rule 2.5

As stated above under Rule 2.5, the note on statements by the offeree is being deleted and inserted as Rule 2.5(j).

Note 3, as referred to above, provides guidance on the position with regard to dividends and their effect on the offer consideration where an offeror has made a *"no increase statement".*

Notes on Rule 2.6

All of the notes on Rule 2.6 are new and seek to provide guidance on how the new PUSU regime will apply in practice. In particular, there is an extensive note on the approach the Panel may take with regard to formal sale processes. A different approach is required in these circumstances because of the way in which these processes are conducted which is quite different to that when an offer is announced. There is also an extensive note on how the PUSU regime will apply in circumstances where an offeror who is subject to the restrictions under Rule 2.8 has procured consent from the Panel to make an approach to the offeree during the restricted period.

Notes on Rule 2.7

Notes 1-4 are the notes on the current Rule 2.5.

Note 5 is being added and reiterates the position outlined in the Panel's Practice Statement issued on 14 February 2017. Where it is a condition of the offer that a transaction agreement entered into between the offeror and offeree not have been terminated, the requirement under Rule 2.7 to include in the firm intention announcement all the conditions to the offer now requires that the termination events specified in the transaction agreement be listed as conditions. A further note in Rule 24.3 (offer document contents) also refers to this requirement.

Notes on Rule 2.8

The notes on Rule 2.8 contain two significant new notes. Firstly, note 4 sets out, in effect, a significant asset test for the purpose of Rule 2.8(c)(i)(7). Secondly, there is an extensive note on how an offeror who is subject to the restrictions under Rule 2.8(c)(i) may invoke the exception under Rule 2.8(c)(ii)(1) (i.e. with the consent of the offeree board).

Notes on Rule 2.9

Note 1 confirms that an announcement of the price at which an irrevocable commitment or a letter of intent has been procured prior to the release of a firm intention announcement will be binding on the possible offeror.

Notes on Rule 2.10

Notes 1 and 2 are the existing notes to the current Rule 2.6 (which is moving to Rule 2.10) with some small amendments. There are also a couple of new cross-referencing notes.

Notes on Rule 2.11

The two notes on Rule 2.11 are the existing notes on Rule 2.7.

Notes on Rules 2.12 / 2.13

The notes on Rules 2.12 and 2.13 are the existing notes on the current Rules 2.10 and 2.11 respectively.

2. Rules 3 – 7 inclusive

2.1 Amendments to Rules 3 – 7 inclusive

Rule

3.1(a)(i)	The amendment has two aspects to it. Rather than just referring generally to advice, firstly, it prescribes that the independent advice is in respect of the financial terms of any offer and secondly, that that advice is whether or not those terms are fair and reasonable. The amendments reflect the current practice of Rule 3 advisors in relation to offers in this jurisdiction.
3.1(c)	The amendment requires that the inability of a financial advisor to provide an opinion as to whether the terms are fair and reasonable should be made known to shareholders and an explanation provided. While these circumstances rarely arise the proposed amendment reflects current practice in this jurisdiction.
4.1(f)	The Rule prohibits an offeree board during the course of an offer from purchasing its own shares except in certain specified cases. It is being moved to Rule 21.1 on the basis that the issue is more appropriately addressed in the context of frustrating action.
4.5	This rule introduces a prohibition on the offeree accepting an offer in respect of treasury shares until after the offer has gone unconditional as to acceptances the purpose of which is to prevent the board of an

offeree from having undue influence over the determination of the acceptance condition.

4.6 This rule addresses asset disposals by an offeree in competition with an offer. Where, in competition with an offer or possible offer, the board of the offeree has announced an intention to sell all or substantially all of the offeree's assets and to return to shareholders all or substantially all of the company's cash balances, including the proceeds of any assets sale, the rule seeks to ensure that an offeror should not be placed at a competitive disadvantage by virtue of the fact that any acquisition by it of an interest in shares in the offeree may have significant consequences under Rule 6 and/or Rule 11, but that an acquisition of an interest in shares of the offeree by an asset purchaser would not have similar consequences. The rule is therefore seeking to provide an orderly framework for the conduct of competitive situations of this kind by only permitting the purchaser of the offeree's assets to acquire an interest in shares in the offeree during an offer period at up to the value per share that the board of the offeree has stated it expects to return to shareholders in the event that the asset sale and related distribution proceeds. The restriction is also being applied to any person whose relationship with the asset purchaser is such that if the latter were an offeror, that person would be treated as a concert party of the asset purchaser.

5.2(a)(i) Rule 5.2 sets out certain exceptions to the restrictions under Rule 5.1 on a person acquiring securities and rights over securities constituting 30% or more of the voting rights of a relevant company. Under the current Rule 5.2(a)(i) the exception in the case of a single holder of securities is confined to the acquisition of securities and does not permit a person to take rights over securities held by the single holder. For example, the taking of an irrevocable commitment to accept an offer from a single holder amounting to 30% or more of the voting securities is prohibited. It is proposed to amend the rule and extend the exception to include rights over securities in the case of a single holder.

5.2(a)(ii)-(iv) The Panel considers that the exceptions to the restrictions under Rule 5.1 that apply when a person announces a firm intention to make an offer, or immediately before it announces such an intention, should apply consistently whether or not the making of the offer is subject to a pre-condition. The Panel, accordingly, proposes removing the distinction between unconditional and pre-conditional firm intention announcements under Rule 5.2(a). The making of pre-conditional firm intention announcements is specifically regulated under Rule 13.2.

5.2(d) This Rule seeks to ensure that the single holder exception is not abused and is only available if the acquisition is of securities or rights over securities which are held by the single shareholder concerned at the time that the acquisition is agreed.

5.4 The current Rule 5.4 requires certain notifications to be made by a person who acquires securities from a single holder and sets out certain detail to be disclosed in such notifications. It is proposed to expand the details to be included in such notifications. There are also a couple of consequential amendments arising from the proposed amendment to Rule 5.2(a)(i).

5.5(a) The Rule is being amended to include civil partners and cohabitants.

6.2(c) & (d) The current Rule 6.2(c) sets out the maximum price at which an offeror may acquire offeree securities without incurring an obligation under Rule 6.1 in circumstances where shareholders are entitled under the offer to retain a dividend. The Rule is, in effect, being replaced by Rules 6.2(c) and (d) which set out in greater detail the position under Rule 6.1 in relation to the scenarios where shareholders are entitled under an offer to receive and retain a dividend but the ex-dividend date has not yet occurred and where shareholders are not entitled under the offer to receive and retain a dividend which has been announced by the offeree.

6.2(e) The Rule is being amended to clarify that Rule 6.1 applies to the acquisition of new and existing securities in circumstances where the offeror has acquired during the relevant period under Rule 6.1 convertible securities and such securities are converted.

A further amendment is being made to clarify that no obligation under Rule 6.1 will be incurred in respect of the acquisition of convertible securities to acquire new or existing securities until such time as exercise or conversion has taken place.

It is also proposed to amend the Rule to clarify that no obligation under Rule 6.1 will arise if convertible securities acquired before the applicable period under Rule 6.1 are exercised during the applicable period under Rule 6.1. The rationale for this is that as the interest in the shares was acquired prior to the applicable period under Rule 6.1, the exercise of the convertible security results therefore only in a change in the nature of the person's interest. A similar amendment is being proposed in Rule 11.1(h). It should be noted that the aforementioned exceptions under Rules 6 and 11 do not apply under Rule 9.

7 No amendments to Rule 7 are being proposed.

2.2 Amendments to the Notes on Rules 3 – 7 inclusive

Note 4 on Rules 4.1 and 4.2

The second part of the note is being deleted as it is no longer relevant.

Note 7 on Rule 4.1 and 4.2

This note is being deleted as Rule 4.1(f) is being moved to Rule 21.1.

Note on Rule 4.4

This note clarifies that Rule 4.4 does not prevent an advisor to an offeree from procuring irrevocable commitments or letters of intent not to accept an offer.

Note 6 on Rule 5.1

This note clarifies that the restrictions in Rule 5.1(a) apply to irrevocable commitments to accept an offer while an irrevocable commitment to vote in favour of a scheme is not caught by the Rule.

Note 7 on Rule 5.1

The note clarifies that the Rule does not prohibit a person from obtaining an interest in shares carrying 30% or more of the voting rights pursuant to the whitewash procedure.

Note 1 on Rule 6

The note explains in more detail the application of Rule 6.

Note 4 on Rule 6

A new paragraph is being added which highlights that the Panel may require a justification of prices used to determine the value of the offer if, inter alia, there is a restricted market in the securities of an offeror.

Note 8 on Rule 6

The note sets out some further detail in relation to the implications under Rule 6.1 in respect of dividends in the context of purchases of offeree securities by the offeror or any person acting in concert with it after the “ex-dividend” date.

Notes on Rule 7

Some additional notes are being added to Rule 7, in the main, relating to dealings by principal traders and discretionary fund managers.

3. Rule 8 Disclosure of dealings during the offer period

3.1 Disclosure of positions

The current disclosure regime under the Rules is based on “dealings” undertaken by persons subject to the regime and not “positions” held by them. In order to provide greater transparency as to where voting control of relevant securities lies it is

proposed, in line with the Code, to introduce a requirement for certain parties to make a public opening position disclosure disclosing their positions.

Under the current Rule 8.1, all dealings in relevant securities (other than the securities of a cash offeror) during an offer period by an offeror or the offeree or by any party acting in concert with them are required to be publicly disclosed. Such a dealing disclosure will also include disclosure of long interests and short positions in the relevant securities in which the dealing took place.

Under the current Rule 8.3, a person who has a gross long interest of 1% or more in any class of relevant securities of the offeree or a securities exchange offeror is required to disclose all dealings (including their long interests and short positions) in the relevant securities of that party. However, if a person subject to Rule 8.3 does not deal in the relevant securities of the offeree or the offeror, they will be under no obligation to make a disclosure under the Rules in relation to their interests and short positions in that party's relevant securities. This is the case regardless of the extent of the person's interests in the relevant securities of that party. Furthermore, Rule 8.3 does not currently require a person to disclose their dealings or positions in the relevant securities of any party to the offer in whose relevant securities they have a long interest of less than 1%.

Under the current Rule 38.5 an exempt principal trader which does not benefit from recognised intermediary status (either because it does not have recognised intermediary status or because it does have recognised intermediary status but is not acting in a client-serving capacity) is required to disclose its long interests and short positions in the relevant securities of the offeree or a securities exchange offeror following a dealing in any relevant securities of that party. If such an exempt principal trader does not deal in the relevant securities of a party to the offer, it will be under no obligation to make a disclosure under the Rules in relation to its interests and short positions in that party's relevant securities.

In view of the above, the Panel is proposing that a public opening position disclosure, containing details of any interests or short positions in any relevant securities of the offeree and any securities exchange offeror, should be made shortly after the commencement of an offer period and, if later, after an announcement that first identifies an offeror, by the following persons:

- the offeree;

- a securities exchange offeror (after its identity is first publicly announced);

- any person who is interested in 1% or more of any class of relevant securities of the offeree or a securities exchange offeror; and

- exempt principal traders connected with an offeror or the offeree which do not benefit from recognised intermediary status. (The disclosure requirements for exempt principal traders are set out in Rule 38.)

A person with an obligation to make an opening position disclosure must disclose details of all relevant securities, including short positions, of the offeree or any securities exchange offeror in which it has an interest.

It is also proposed to amend Rule 8.3 to require any person who has a gross long interest of 1% or more in any class of relevant securities of the offeree or a securities exchange offeror to disclose any dealings in the relevant securities not only of that party but also of any other party to the offer (other than a cash offeror). The Panel is of the view that the latter combined with the opening position disclosure requirement will ensure that persons making disclosures under the new Rules will provide a more complete picture of their long interests and short positions in relevant securities.

3.2 Amendments to Rule 8

The vast majority of the proposed amendments relate to, or are as a consequence of, the changes referred to above.

Rule

8.5 The amendments to this rule are necessitated by the proposed deletion of the current Rule 2.9 (mode of announcement).

8.7(c) The proposed amendment to this rule requires any Rule 8.7 arrangements which the offeree has entered into before the commencement of the offer period or an offeror has entered into before the announcement which first identifies it as an offeror, to be disclosed in the announcement that commences the offer period or the announcement that first identifies the offeror, as the case may be.

As a result of the proposed changes to the disclosure requirements under Rule 8 the Rule 8 Disclosure Forms in Appendix 3 of the Rules are being amended. The new Disclosure Forms are set out in Appendix 3.

3.3 Amendments to the Notes on Rule 8

Note 3 on Rule 8

The note draws attention to the expectation on the part of the Panel that the offeree and the offeror will assist it by providing it with shareholding details so that the Panel can monitor compliance with the opening position disclosure requirements of Rule 8.

Note 6 on Rule 8

The note is being amended to clarify that where a fund manager delegates the management of certain funds under its control to third party managers, it is the latter who will be responsible for complying with disclosure obligations under Rule 8 in respect of those funds provided it has the discretion regarding dealing, voting and offer acceptance decisions in relation to those funds. This reflects current practice.

Note 9 on Rule 8

This note is being deleted as it has been superseded by established practice that all public disclosures under the rule must be made through a RIS.

Note 10 on Rule 8

The note provides guidance on the level of disclosure that will be expected in the case of disclosures by trusts.

Note 12 on Rule 8

The current note is being replaced by a significantly more detailed note in relation to the disclosure obligations of potential offerors in relation to (i) opening position disclosures in circumstances where the potential offeror has not been identified; and (ii) the dealing disclosure requirements where the potential offeror is a participant in a formal sale process.

Note 13 on Rule 8

The current note 13 is being deleted as it deals with matters that are not related to the disclosure requirements of the Rules.

Notes 14 and 15 on Rule 8

These two notes are being added to provide detail around how the new opening position disclosure requirement will operate in practice (note 14) and dealing disclosure requirements in light of the composite dealing approach being taken under Rule 8 (note 15).

Note 16 on Rule 8

The note sets out what is essentially current practice in circumstances where a Rule 8 disclosure needs to be amended.

4. Rule 9 The Mandatory Offer

4.1 Amendments to Rule 9

Rule

9.4(d)(ii) The first amendment, together with a small consequential amendment, is for the purpose of clarifying that the rule applies to both new and existing shares. A further amendment sets out how the price for the underlying shares is to be established where the shares are acquired through the exercise of a convertible security where the counterparty is not the offeree e.g. a traded option.

9.4(e) Rule 9.4(e), which sets out how the minimum price of the cash offer is to be established where shareholders are entitled under the offer to retain a dividend declared by the offeree but not yet paid, is being amended (by way of a cross-reference to revised Rules 6.2(c) and (d), referred to above) to set out the position in relation to the scenarios where shareholders are entitled under an offer to receive and retain a dividend but the ex-dividend date has not yet occurred and where shareholders are not entitled under the offer to receive and retain a dividend which has been announced by the offeree.

9.5 The rule is being amended to include civil partners and cohabitants.

4.2 Amendments to the Notes on Rule 9

Note 2 on Rule 9.1

The note is being extended to draw attention to the fact that the Panel will when considering whether shareholders voting together are acting in concert have regard to any statement by ESMA on shareholder co-operation and acting in concert with respect to the EU Takeover Bids Directive.

Note 7 on Rule 9.1

The note sets out the chain principle whereby a person acquiring more than 50% of the voting rights in a company (not necessarily a relevant company) may acquire or consolidate control (i.e. 30%) of a second company, which is a relevant company because the first company holds directly or indirectly 30% or more of the voting rights in the second company.

It sets out the two factors which the Panel will take into account in determining whether to waive any Rule 9 obligation. The first is whether the holding in the second company represents a substantial part (50% or more) of the assets, profits or market value of the first company. The second is whether securing control of the second company might reasonably be considered to be a significant purpose of acquiring control of the first company.
It could be argued that the two tests do not sit well together i.e. the 50% objective test has a high threshold while the second test is a relatively lower subjective test. The Panel is proposing to bring the two tests more into line with each other by raising the threshold in the second test. It is proposed to replace the words *"a significant"* purpose with *"the principal"* purpose. In the Panel's view, this ought to provide greater certainty to market participants as to whether the chain principle will apply in any given set of circumstances.

Note 9 on Rule 9.1

This note is being added to clarify that 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.

Note 13 on Rule 9.1

The note is being added to highlight that Rule 9.1 will not apply in circumstances where resolution tools, powers and mechanism provided for in Part 4 of the EU (Bank Recovery and Resolution) Regulations 2015 are used.

Note 14 on Rule 9.1

A new note is being added to clarify that 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

Note 3 on Rule 9.2

Part (a) of the note is being amended to bring it into line with the new Rule 13.4 (see below) regarding financing conditions. Sub-paragraph (a)(ii) is being deleted as it is, in effect, addressed by Rule 9.6.

Rule 9.3(b) and (c) provide that where an offer lapses under Rule 12 the Panel may require the offeror and persons acting in concert with it to reduce their holdings of securities in the offeree. Part (b) of note 3 is being amended to extend this principle to circumstances where any governmental or regulatory clearance condition (other than one referred to in Rule 12) is not satisfied.

Notes on Possible Waivers of and Derogations from Rule 9

Note 3(b) is being amended to provide that the Panel may regard circumstances in which a court sanction has been obtained as constituting a suitable form of protection for shareholders in a rescue operation.

Note 5 sets out the factors which the Panel might take into account in considering whether to waive the requirement of a general offer under Rule 9 in circumstances where securities conferring 50% or more of the voting rights are held. It is being extended to address the scenario where, 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 confirm in writing that they approve the proposed waiver and would vote in favour of any resolution to that effect at a general meeting.

5. Rule 10 The Acceptance Condition / Appendix 1 Procedures for Receiving Agents

5.1 Euroclear Bank and book entry transfer facilities

A number of material amendments are being proposed to Rule 10 and the notes thereon. Following the migration of holdings and settlement of Irish securities to the Euroclear Bank settlement system it has become necessary to amend the rule so that it specifically addresses acceptances in respect of holdings in the Euroclear Bank system. It is also proposed to amend the rule to deal with acceptances in

respect of holdings in other book entry transfer facilities (e.g. The Depository Trust Company in the US). All of the material amendments relate to these issues. As a result of the foregoing migration it has also been necessary to make certain amendments to Appendix 1. In advance of publishing this paper the Panel consulted with Euroclear Bank and with certain registrars in relation to the proposed amendments to Rule 10 and in relation to the proposed amendments to Appendix 1.

5.2 Amendments to Rule 10

Rule

10.3 Paragraph (a) of the rule is being amended to incorporate an offer acceptance which is not made by means of an acceptance form. In such cases, an electronic message which complies with paragraph (c) must be received by the offeror's receiving agent on or before the last time for acceptance set out in the offer document.

Paragraph (b) sets out the requirements where an offer acceptance is made by means of an acceptance form and will be relevant, for example, in US tender offers where a properly completed letter of transmittal must be received by the exchange agent. Such letters of transmittal will be considered by the Panel under Rule 10.3(b)(ii).

Paragraph (c) sets out the requirements for an electronic message in the case of the Euroclear Bank system, in sub-paragraph (c)(i), and in the case of a holding in any other book entry transfer facility, in sub-paragraph (c)(ii).

Paragraph (d) has been amended to remove references to the Manual of the Institute of Chartered Secretaries and Administrators as that manual has been discontinued. In the circumstances, it has been decided that the rule should be amended on the basis that an acceptance form will be regarded as completed to a suitable standard, where the form constitutes a transfer, if it meets the criteria for the registration of transfers set out in the Stock Transfer Act 1963 and the offeree's constitution.

10.4(c) The rule has been added to clarify that shares which have been borrowed by the offeror should not be counted towards fulfilling an acceptance condition.

5.3 Amendments to the Notes on Rule 10

Note on Rule 10.3

The note has three elements to it. Firstly, it has an extensive note on the application of the rule in the context of US tender offer practice including the the application of the rule in a US tender offer where a shareholder can accept an offer by delivering a notice of guaranteed delivery of those documents

required under the offer terms.

Secondly, the note highlights that the Panel will expect that the offeror and the offeree will take such action as is necessary to notify Euroclear Bank of the offer 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.

Thirdly, the note states that 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.

Note on Rule 10.4

The note highlights that under Rule 10.4 purchases and other acquisitions of offeree 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 and that shares purchased and held in a participant account in a settlement system may not be counted towards satisfying the acceptance condition.

5.4 Amendments to Appendix 1

Paragraph 2	Sub-paragraph (b) has been amended to reflect the renaming of the Institute of Chartered Secretaries and Administrators as The Chartered Governance Institute UK & Ireland.
Paragraph 3	Certain amendments have been made as a result of the migration of Irish securities to the Euroclear Bank settlement system.
Paragraph 4	This new section sets out the obligations of an offeree, following the release of a firm intention announcement, to provide an offeror with details of addresses, electronic addresses, elections and other information following a request for such information from the offeror.
Paragraph 8	Sub-paragraphs (c) and (d) have been added to, in effect, broaden the permissible disclaimers which may be included in receiving agents' certificates.

6. Rule 11 Nature of consideration to be offered in a voluntary offer

6.1 Amendments to Rule 11

Rule

11.1(c)	Similar to the amendment being proposed in Rule 6.2, the current Rule 11.1(c), which sets out how the minimum price of a cash offer is to be established where shareholders are entitled under the offer to retain a

dividend declared by the offeree but not yet paid, is being replaced (by way of a cross-reference) by Rules 6.2(c) and (d) which set out in greater detail the position under Rule 11.1 in relation to the scenarios where shareholders are entitled under an offer to receive and retain a dividend but the ex-dividend date has not yet occurred and where shareholders are not entitled under the offer to receive and retain a dividend which has been announced by the offeree.

11.1(h) The rule is being amended (as in Rule 6.2(e)) to clarify that Rule 11.1 applies to the acquisition of new and existing securities in circumstances where the offeror has acquired during the relevant period under Rule 11.1 or the offer period convertible securities and such securities are converted.

Similar to the amendment being proposed in Rule 6.2(e), it is proposed to amend the rule so that no obligation under Rule 11.1 will arise if convertible securities acquired before the relevant period under Rule 11.1 were exercised during the relevant period under Rule 11.1 or the offer period. The rationale for this is that as the interest in the shares was acquired prior to the relevant period under Rule 11.1, the exercise of the convertible security results therefore only in a change in the nature of the person's interest. It should be noted that the aforementioned exceptions under Rules 6 and 11 do not apply under Rule 9.

6.2 Amendments to the Notes on Rule 11

Note 1

This note is a similar note to note 1 on Rule 6 and further explains how Rule 11 applies in the case of convertible securities.

Note 10

The note sets out the circumstances in which the Panel will consider waiving the requirements of Rule 11.2 where offeree management are the only offeree shareholders who receive offeror securities under the offer.

7. Rule 12 The Competition Act and the European Commission

Rule 12 is being updated to reflect changes in legislation namely, the introduction of the Competition and Consumer Protection Act 2014, since the rule was last published.

8. Rule 13 Pre-conditions in firm offer announcements and offer conditions

8.1 Amendments to Rule 13

Rule

13.4 This is a new rule on financing conditions. Rule 13.4(a) prohibits, except on the basis outlined in paragraph (b) of the rule, an offer being subject to a condition relating to financing. The current Rules 2.5(d) and 24.7 require that where the consideration under an offer is for cash or includes an element of cash, the firm intention announcement and the offer document respectively must include confirmation by the offeror's financial adviser that resources are available to the offeror sufficient to satisfy full acceptance of the offer. Consequently, the offeror must have cash available to it, in effect, on a certain funds basis, before it launches an offer.

Rule 13.4(b) provides that where a cash offeror proposes to finance the cash consideration by an issue of new securities, the offer shall be made subject to any condition required, as a matter of law or regulatory requirement, in order validly to issue such securities or to have them listed or admitted to trading. Such conditions must not be waivable and the Panel must be consulted in advance. The note on Rule 13.4 (see below) provides further clarity on what conditions will normally be acceptable under this rule.

8.2 Amendments to the Notes on Rule 13

Notes on Rule 13.3

Two new notes are being added to Rule 13.3. The first note on invocation of conditions provides some guidance on when an offeror may be permitted to invoke an offer condition and sets out some of the factors which the Panel will consider when determining whether to permit an offeror or an offeree to invoke an offer condition. The note also states that the Panel will normally accept that Rule 13.3(a) does not also (in addition to the current exceptions of the acceptance condition and the competition conditions under Rule 12) apply to a condition relating to compliance with the antitrust filing and waiting period requirements of the US Hart-Scott-Rodino antitrust legislation, subject to confirmation from the Panel on a case-by-case basis. Some of the material in this note was included in the Panel's Practice Statement on implementation agreements issued in February 2017.

The second note relates to implementation agreements the substance of which was contained in the February 2017 Panel Practice Statement. The note also cross-refers to note 2 on Rule 24.3 which highlights the requirement to include the termination events in an implementation agreement as Rule 13.1 compliant conditions to the offer.

Note on Rule 13.4

As referred to above, this note accompanies the new Rule 13.4(b) on financing conditions and sets out those conditions that would normally be considered as necessary for the purposes of the rule.

9. Rule 16 Special arrangements and management incentivisation

Amendments to Rule 16

Rule

16.2(b) This rule deals with the Panel's discretion to require that offeree shareholder approval be obtained for management incentivisation arrangements which an offeror may wish to put in place for offeree management following completion of the offer. Sub-paragraph (b)(ii) sets out circumstances in which such shareholder approval will be required, subject to the exception in sub-paragraph (b)(iv). The latter exception applies where the management incentivisation arrangements 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. In order to provide the Panel with greater flexibility to determine when such an exception should apply, the Panel is of the view that it is appropriate to delete sub-paragraph (b)(iv) and to incorporate the substance of sub-paragraph (b)(iv) in note 1 on Rule 16.2.

10. Rule 17 Announcements of acceptance levels etc.

Amendments to Rule 17

Rule

17.1(a) The rule is being expanded to require certain additional information to be included in Rule 17 announcements.

17.1(e) The rule is being amended to prohibit an offeror making any statement about the level of acceptances of an offer other than an announcement conforming with Rule 17.1(a) or with Panel consent.

11. Rule 19 Communications

11.1 Amendments to Rule 19

Rule

19.1(e) The current Rule 19.1(e) is being deleted and effectively replaced by Rules 20.5 and 20.6 which will address in more detail the use of videos and social media respectively (see below).

A new Rule 19.1(e) is being added to clarify that the standards of care required under Rule 19.1 do not apply to any separate opinion of the employee representatives of the offeree that is appended to the offeree response circular.

19.2(a) The rule is being amended to clarify that the requirement for a directors' responsibility statement does not apply in the case of any separate opinion of the employee representatives of the offeree that is appended to the offeree response circular.

19.3(b) The current rule which sets out the requirements for merger benefits statements is being deleted as such matters will now be addressed under a new Rule 28 (see below) which will address both profit forecasts and quantified financial benefits statements.

19.4 Some minor amendments are being proposed to the advertisements rule.

19.5 The rule is being amended to expand the scope of the rule to cover telephone campaigns involving not only shareholders but also any person interested in relevant securities of the offeree.

19.7 The rule is being deleted as the distribution and availability of documents and announcements will now be addressed under Rule 30 (see below).

19.8 The rule is somewhat outdated at this stage and is being deleted.

19.9 While the rule is being deleted much of the substance of the rule is being moved to a revised Rule 26 which will set out in detail the requirements to publish information on a website.

11.2 Amendments to the Notes on Rule 19

Note 1 on Rule 19.1

Additional wording is being added to highlight the responsibilities of financial advisers in guiding their clients and public relation advisers with regard to publishing information during the course of an offer.

Note 4 on Rule 19.1

This is a new note. The first paragraph has been transferred from the current note 1 on Rule 19.4 with the latter note now cross-referring to note 4 on Rule 19.1. The second paragraph clarifies that the Panel does not consider that Rule 19 applies to contractual agreements between the parties to an offer, such as implementation agreements. The third paragraph clarifies that documentation published in connection with the debt syndication of an offer is not published *"in connection with"* that offer for the purpose of Rule 19.

Note 2 on Rule 19.3

The current note 2 is being deleted as this issue will be addressed in Rule 2.6.

The renumbered note 2 is being amended to provide greater detail on how the Panel will address situations where an offeror or an offeree make statements about the level of support from their respective shareholders.

Note 5 on Rule 19.4

The note is being deleted as it is no longer relevant in the context of the Rules.

Note 4 on Rule 19.5

This new note provides some guidance on telephone campaigns and specifically what type of telephone contact with shareholders would not be regarding as falling within Rule 19.5.

Notes on Rules 19.7 and 19.9

These notes are being deleted as the respective rules are being deleted.

12. Rule 20 Equality of information

12.1 Amendments to Rule 20

Rule

20.1 The rule requires that information about companies involved in an offer is made equally available to all shareholders of the offeree. An amendment is being made to the rule to ensure that it captures the tendering of opinions as well as of information.

The current Rules 20.1(b) and (c) have been renumbered as Rules 20.2(a) and (b).

20.2(a) Sub-paragraph (i) is being amended to expand the information required to be included in the confirmatory letters to the Panel. The amendment reflects current practice.

It is proposed to amend paragraph (ii) to permit an offeree and an offeror who have disclosed material new information in breach of Rule 20.2 to publish that information by way of an announcement rather than by way of sending a circular to shareholders. The Panel is of the view that an announcement is a more efficient way of communicating the information to all shareholders. It is also in keeping with the revised Rule 30 which will, in large part, remove the requirement for the

offeree/offeror to circulate hard copies of offer documents etc. to shareholders.

20.2(b) This rule addresses investment research issued during the course of the offer by brokers and advisers connected with the offeree or the offeror. The amendments being proposed clarify the application of the rule with respect to investment research.

20.3(e) This new rule is being added to ensure that, if following an offeree becoming aware that an offer may be made, the offeree makes a public announcement that it has commenced discussions with potential purchasers in relation to the sale of all or substantially all of its assets, information given by the offeree to those potential purchasers must, on request, be also given to the offeror. The purpose of the rule is to ensure equality of treatment for the offeror in the context of a possible asset purchase/sale transaction.

20.5/20.6 As referred to above, these two rules seek to regulate the use of videos and social media during the course of an offer.

As regards the use of videos, it is proposed that they may be published only with the prior consent of the Panel, must be published on a website in accordance with Rule 26 and must comprise only a director or senior executive reading from a script or participating in a scripted interview.

With regard to the use of social media, except for the exceptions referred to below, it is proposed to prohibit the use of social media for the purpose of publishing information relating to an offer. Rule 20.6 will permit social media to be used to publish the following:

(i) the full text of an announcement which has been published in accordance with Rule 30.1(a);

(ii) the full text of a document which has been published on a website in accordance with the Rules;

(iii) a video which has been published with the prior consent of the Panel in accordance with Rule 20.5; or

(iv) a notification of a link to the webpage on which such an announcement, document or video has been published, which notification must comply with the requirements of Rule 30.6.

The Panel is of the view that restricting the publication of information relating to an offer through social media during the course of an offer is desirable and that the approach adopted under Rule 20.6 is

appropriate and proportionate given the limitations of some social media platforms.

12.2 Amendments to the Notes on Rule 20

While there are some amendments to the notes on Rule 20 the only material change is the new note 8 on Rules 20.1 and 20.2 which sets out the circumstances in which a dispensation may be granted from the normal requirement (under the current Rule 20.1(b)) that all meetings with shareholders etc. are chaperoned by the relevant financial adviser.

13. Rule 21 Frustrating action

13.1 Amendments to Rule 21

Rule

21.1(a) Sub-paragraph (1) is being amended to include the redemption or purchase by the offeree of its own securities which, as referred to above, is being moved from the current Rule 4.1(f).

Some of the text in sub-paragraph (4) is being deleted as it is unnecessary.

21.1(b) The current rule is being replaced by a more detailed rule which sets out the requirements with which an offeree is required to comply when seeking shareholder approval under the exception in Rule 21.1(a)(i) including certain information which must be included in the circular to shareholders.

13.2 *Amendments to the Notes on Rule 21*

Note 1 on Rule 21.1

The current note is being expanded to, in effect, reflect the current practice of the Panel when considering whether an action would constitute frustrating action i.e. whether the offeror has any objection to the action being taken and whether a proposed action is conditional on the offer being withdrawn or lapsing.

Note 2 on Rule 21.1

Some amendments are being made to the note to provide greater specificity around the calculation of *"material amount".*

Note 7 on Rule 21.1

The current note is being deleted as the cross-reference is no longer required given that the substance of Rule 4.1(f) is being transferred to Rule 21.1.

A new note 7 is being added to clarify that the requirement under Rule 21.1(b)(ii) to consult with the Panel when an offeree is setting a date for the general meeting to seek shareholder approval is for the purpose of ensuring that shareholders have sufficient time following the general meeting (i.e. when they will know the outcome of the shareholder vote) to accept the offer if they so wish.

Note 10 on Rule 21.1

This new note is being added to highlight that the Panel should be consulted before the offeree enters into any contract to take any action that may 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. Subject to certain exceptions, an offeree is prohibited under Rule 21.1 from entering into any contract otherwise than in the ordinary course of business. However, the shareholder approval exception under the rule is not practically available to the offeree until it has a signed contract in place. The Panel will wish to assess before the contract is signed whether it contains other provisions (for example, cost cover arrangements) that may constitute frustrating action.

Note 11 on Rule 21.1

Rule 21.1 does not specifically address fees that may be payable by an offeree that seeks the approval of its shareholders for the purchase or sale of assets (usually in competition with an offer for the company). Such an offeree may seek to agree an inducement fee with the vendor/purchaser of those assets payable if shareholders do not approve the transaction. Panel consent is required for any such agreement.

A new note 11 on Rule 21.1 provides that the Panel may consent to inducement fees in asset purchase/sale transactions provided such fees are limited to 1% of the value of the asset transaction (or, if there are two or more transactions in respect of the same assets, the transaction with the highest value) and the aggregate value of inducement fees that may be paid by the offeree in respect of all transactions to which Rule 21.1 applies (i.e. excluding those under Rule 21.2) is no more than 1% of the value of the offeree calculated by reference to the value of the offeror's offer.

Note on Rule 21.2

Rule 21.2 prohibits the payment of inducement fees payable by an offeree in connection with an offer. However, the current note on the rule sets out the basis on which the Panel may consent to such fees. It is proposed to amend the note to incorporate additional confirmations which the Panel will require before granting consent. The Panel will no longer review the inducement fee documentation in advance of granting consent but will rely on the aforementioned confirmations when deciding whether to grant consent. The objective of the confirmations is, inter alia, to ensure:

- that a fee is payable only in very limited circumstances i.e. an offer or a competing proposal completes or where the board of the offeree decides to withdraw its recommendation; and

- that the aggregate value of the inducement fees that may be paid by an 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.

The note confirms that the Panel may consent to the offeree agreeing inducement fees with multiple 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.

14. Rule 23 General obligation as to information

Amendments to Rule 23

Rule

23.1(b) The rule is being deleted as the issue of material changes in information published by the offeree and an offeror will be addressed under an amended Rule 27.1.

23.2 This new rule is essentially an amalgamation of the current Rules 24.2(f) and 25.1(b) but goes a little further than the latter two rules as it encompasses announcements as well as documents sent to shareholders.

15. Rule 24 Offeror documents

15.1 *Amendments to Rule 24*

Rule

24.1 While this is a new rule it is essentially comprised of the current Rules 30.1 and 30.2, which are being deleted.

24.2 Some minor changes are being made to this rule which is the current Rule 24.1.

24.3 It is proposed to amend the way in which financial information is required to be disclosed by the offeror in the offer document. The proposal is to move away from the very specific list of information which is required to be disclosed (under the current Rule 24.2) and replace it with a requirement to disclose details of the website address where the relevant audited accounts/the interim results etc. may be found. On this basis, the distinction in the Rules regarding the financial information to be disclosed in a securities exchange offer and in a cash offer, is being dropped (other than in the context of material changes under Rule 24.3(a)(ii)). These changes are in keeping with the overall

policy change in Rule 30 (see below) to update the Rules in relation to the use of electronic communications and websites and to move away from the requirement in every case to send hard copy documents to shareholders.

The deletion in Rule 24.3(b)(iv) is required as Rule 24.16 will now require the offer document to clarify the situation in relation to offeree dividends.

The addition to Rule 24.3(b)(vii) reflects current practice following the publication of the Panel's 2017 Practice Statement.

Additional disclosure requirements are being added in sub-paragraphs (b)(xvi) through (b)(xix). Rule 24.3(b)(xvi) will require disclosure of summary details of any current ratings and outlooks publicly accorded to the offeror and the offeree by credit rating agencies, any changes made to previous ratings or outlooks during the offer period, and a summary of the reasons given, if any, for any such changes.

Paragraph (d) of the rule is being amended to bring more specificity to the disclosure requirements around how the offer is to be financed.

As referred to above, paragraph (f) is being deleted and moved to Rule 23.2.

24.4 Rule 24.4(a)(ii)(3) is being deleted as the Panel does not consider the interests and dealings of shareholders who have given an irrevocable commitment or a letter of intent to be material information for an offeree shareholder when considering the merits of an offer.

Rule 24.4(d) is also being deleted as it will be superseded by Rule 2.9 (irrevocable commitments and letters of intent).

24.10 It is proposed to amend the requirement (under the current Rule 24.9) that the listing condition be in terms which ensure that it is capable of being satisfied only when the appropriate listing authority has announced its decision to grant the quotation. Such an amendment is necessary as it is not possible in many cases for such a condition to be satisfied given the way in which listing authorities usually grant quotations. The amendments being proposed will result in the rule coming more into line with the listing process. They also reflect the Panel's current practice in this area.

24.14 The current Rule 24.14 is, in effect, being moved to Rule 27.

24.16 This new rule will require the offer document to contain certain offer terms clarifying how offeree dividends will be treated under the offer.

15.2 Amendments to the Notes on Rule 24

Note 2 on Rule 24.3

The note relates to the amended Rule 24.3(b)(vii) which, in effect, requires the conditions to an offer to include any termination events prescribed by any implementation agreement between the offeror and offeree if it is a condition of the offer that the implementation agreement not have been terminated. It reflects current practice following the publication of the Panel's 2017 Practice Statement.

Note on Rule 24.10

The note attempts to provide some guidance on contingent value rights and states inter alia that the Panel will not normally expect cash payments to be made under such instruments to be subject to cash confirmation by the financial adviser under Rules 2.7 and 24.8.

16. Rule 25 Offeree board circulars

Amendments to Rule 25

Rule

25.1 Similar to the change to Rule 24.1, this is a new rule most of which is being transferred from Rule 30.3. The second sentence of Rule 25.1(b) is new and sets out what the offeree is required to do when the separate opinion from the representatives of the offeree's employees is not received by the offeree in good time before the publication of the first response circular.

25.2(b) This is the current Rule 25.1(b) and as stated above is being moved to Rule 23.2.

25.4(a)(ii)(3) This rule is being deleted for the same reasons referred to above under Rule 24.4 i.e. the Panel does not consider the interests and dealings of shareholders who have given an irrevocable commitment or a letter of intent to be material information for an offeree shareholder when considering the merits of an offer.

25.5 The current Rule 25.4 requires details of certain types of offeree directors' service contracts to be disclosed in the first response circular i.e. those contracts that have more than 12 months to run (as defined in the current Rule 2.1(b)(v) of Part A of the Rules). Rule 25.5 will require details of all directors' service contracts to be disclosed irrespective of their terms.

25.6 The rule is an amended version of the current Rule 25.8. The latter requires the relevant statement by the offeree to be made by reference to its last published audited accounts whereas Rule 25.6 will permit the

offeree when making the statement to take into account any preliminary statement of annual results, half-yearly financial reports or interim financial information published since the publication of its audited accounts.

25.7 This is a new rule comprising the current Rules 25.5 and 25.6 and also includes some additional disclosure requirements. The current Rule 25.7 is, in effect, being moved to Rule 27.

17. Rule 26 Documents to be published on a website

Amendments to Rule 26

The current Rule 26 sets out those documents which are required to be made available for public inspection and published on a website following publication of the offer document and the first response circular. It is proposed to amend the rule in a couple of material respects. Firstly, there will no longer be a requirement to have the documents made physically available for inspection and publication on a website will suffice. Secondly, the latter requirement will apply from the commencement of the offer period with Rules 26.2 and 26.3 specifically prescribing the documents to be published following a firm intention announcement and the making of the offer respectively. Rule 26.1 is a general rule which sets out those documents and information required to be published on a website throughout the course of the offer.

Rule 26.4 is a new rule and, with the exception of paragraph (f), is essentially derived from the current Rule 19.9.

18. Rule 27 Material changes and subsequent documents

Amendments to Rule 27

Rule

27.1 Part (a) of the rule, in effect, replaces the current Rules 24.14 and 25.7 which are being deleted. However, it goes further than the latter two rules by requiring the announcement of any material new information which would have been required to have been disclosed in any previous document or announcement published during the offer period, had it been known at the time.

Part (b) of the rule which states that the Panel may, in addition to the announcement, require a document setting out the relevant information to be sent to offeree shareholders, reflects the position under the current Rules 24.14 and 25.7.

Part (c) of the rule is based on the current Rule 27.1, with some amendments. The rule will now only apply during the offer period and to documents published in connection with the offer. The non-exhaustive list of matters to be updated is also being extended.

27.2 The current Rule 27.2 is being replaced by a new rule which will require an offeree and an offeror who has published in any document or announcement a profit forecast, quantified financial benefits statement or an asset valuation to include certain confirmations in any document subsequently published by them in connection with the offer, unless superseded by information included in the new document.

19. Rule 28 Profit forecasts and quantified financial benefits statements

19.1 Amendments to Rule 28

Rule 28 has been completely revised and the new rule is, in the main, based on the principles underpinning Rule 28 of the Code. The rule will also set out the reporting requirements in respect of quantified financial benefits statements ("QFBS"). A cash offeror will not be required to have any profit forecast or QFBS reported upon.

Under the rule, profit forecasts are essentially categorised into short term forecasts (i.e. those for a financial period ending 15 months or less from the date on which it was first published) and long term forecasts (i.e. those that are not short term forecasts). New definitions of *"profit forecast", "ordinary course profit forecast", "quantified financial benefits statement" and "profit estimate"* are included in Part A of the new Rules.

Rule

28.1 In summary, the treatment of short term forecasts and QFBS statements as set out in Rule 28.1 is as follows:

(i) If an offeror or an offeree publishes any short term profit forecast or QFBS statement during the offer period, the document or announcement in which it is first published must include the reports from the reporting accountants and financial advisers referred to in Rule 28.1(a).

(ii) Such reports will also be required if the profit forecast was published before the offer period commenced but after it received or made an approach with regard to a possible offer except where the forecast is a short term ordinary course profit forecast in which case the options under Rule 28.1(c) are available to the party i.e. repeat the forecast and include the directors' confirmations referred to in sub-paragraph (i) of the rule (the *"Directors' Confirmations*"); withdraw the forecast and include an explanation as to why it is no longer valid; or include a new forecast with the reports referred to in Rule 28.1(a) (the *"Rule 28.1(c) options"*).

(iii) If the profit forecast was published before the offeror or the offeree made or received an approach with regard to a possible offer, the

offer document or first response circular or any earlier document or announcement published during the offer period in which the profit forecast is referred to must satisfy one of the requirements of the Rule 28.1(c) options.

(iv) The exception under (ii) above does not apply to an ordinary course profit forecast published by an offeree in the case of a management buy-out or an offer being made by the existing controller. In such cases, where a short term profit forecast is published by the offeree before it received an approach with regard to a possible offer, the offer document, or any earlier document or announcement published during the offer period in which the profit forecast is referred to, shall repeat the profit forecast and include the reports specified in Rule 28.1(a).

28.2 The rule addresses long term profit forecasts (i.e. those for a financial period ending more than 15 months from the date on which it was first published). In summary, the treatment of such forecasts as set out in the rule is as follows:

(i) If such a forecast is published during the offer period the document or announcement in which the forecast is first published must include the Directors' Confirmations.

(ii) If such a forecast is published before the offer period commenced but after the party made or received an approach with regard to a possible offer, the forecast must be repeated in the offer document or the first response circular and that document (or any earlier document or announcement published during the offer period in which the profit forecast is referred to) must include the Directors' Confirmations.

(iii) If such a forecast is published before the offeror or the offeree made or received an approach with regard to a possible offer, the offer document or first response circular or any earlier document or announcement published during the offer period in which the forecast is referred to must satisfy one of the requirements of the Rule 28.1(c) options.

28.2(d) As a profit forecast for a financial year beyond the current financial year will necessarily be based upon profit forecasts for the current financial year and (if appropriate) for any intervening years, the Panel considers that where a party to an offer wishes to publish a profit forecast with respect to a future financial year the party concerned should provide offeree shareholders with a full sequence of projected profits. The Panel would be concerned if the Rules were to permit profit forecasts for future financial years to be published (but not reported on) and used as a device to enable shareholders, analysts and other market

participants to calculate a profit forecast for the current financial year, without the party concerned having published (and, where appropriate, having obtained reports on) that profit forecast. Consequently, under Rule 28.2(d) it is proposed that if, during the offer period, the offeree or the offeror either publishes for the first time or repeats a profit forecast for a future financial year, the document or announcement shall include a corresponding profit forecast for the current financial year and for each intervening financial year.

28.3/28.4 Rules 28.3 and 28.4 address the compilation and the assumptions and bases of belief respectively of profit forecasts and QFBS statements.

28.5 The rule specifies those profit estimates which will fall outside Rule 28.1.

28.6 The rule sets out the disclosure requirements for QFBS statements where such statements are included in a document or announcement published during the offer period.

28.7/28.8 Rule 28.1(h) states that, subject to Rules 28.7 and 28.8, the repetition in any document, interview or statement (whether oral or written) during an offer period by or on behalf of an offeror or the offeree, or by a person acting in concert with an offeror or with the offeree, of a profit forecast or profit estimate relative to the offeree or a securities exchange offeror made by a third party (whether before or during the offer period) shall be deemed to be a profit forecast or profit estimate to which Rule 28 applies. Rule 28.7 sets out the bases on which the offeree or a securities exchange offeror may publish on their website during an offer period forecasts relating to it that are derived from investment analysts' forecasts in order for the forecasts to fall outside the scope of Rule 28. Rule 28.8 sets out the basis on which a party to an offer may refer to investment analysts' forecasts relating to any other party to the offer.

19.2 *Amendments to the Notes on Rule 28*

As Rule 28 is being completely revised a number of the existing notes are being deleted and a number of new notes are being added, the most material of which is note 3(b) on Rule 28.1. The latter note confirms that Rule 28.1(a) applies to a short term ordinary course profit forecast published during an offer period and therefore the document or announcement in which the forecast is first published must include the reports from its reporting accountants and financial advisers required by that rule. However, the note states that except in the case of a management buy-out or an offer being made by a person who controls the offeree, the Panel, with the agreement of each of the other parties to the offer, may consent to waiving the requirement for such reports, in which case the relevant document or announcement must include the Directors' Confirmations.

20. Rule 29 Asset valuations

20.1 Amendments to Rule 29

It has been many years since Rule 29 has been reviewed and, while issues rarely arise under the rule, the Panel decided that it should be updated and, where appropriate, brought into line with the comparable asset valuation rule under the Code.

Rule

29.1(b) The rule disapplies Rule 29 in the case of a cash offeror in respect of a valuation of its own assets.

29.1(c) The deleted text (the current Rule 29.1(b)(ii)) is no longer necessary as Rules 29.2 and 29.3 set out the requirements for a valuer and a valuation report.

29.2/29.3 As stated above, these rules set out the requirements for a valuer and a valuation report (the current Rule 29.2(b) is therefore redundant and is being deleted).

29.5 Some of the text in the rule (the current Rule 29.4) is being deleted as the matter is now being dealt with under Rule 29.3(a).

The current Rule 29.5 is being deleted as: Rule 29 no longer refers to a valuers' opinion but to a valuation report (which will contain the opinion) and therefore paragraph (a) is no longer relevant; the matter referred to in paragraph (b) will now be dealt with under Rule 23.2; and the matters referred to in paragraph (c) will be dealt with under Rules 26 and 29.3(g).

20.2 Amendments to the Notes on Rule 29

Notes on Rule 29.1

Some new notes are being added to Rule 29.1 including a note on net asset values clarifying that where an offeree or offeror gives a net asset value, Rule 29 requires a valuation in respect of the underlying assets.

Notes on Rule 29.2

The notes set out guidance on the factors which the Panel may take into account when considering whether a valuer is independent and also when a valuer will be considered to be appropriately qualified.

Note 2 on Rule 29.3

The note confirms, inter alia, that only in exceptional circumstances will the Panel

consent to the basis of valuation being qualified and furthermore is unlikely to consent to the making of special assumptions.

21. Rule 30 Making of announcements and distribution of documentation

Amendments to Rule 30

Rule 30 is a new rule setting out the requirements for making announcements and distributing documentation. As referred to above, the current Rules 30.1 and 30.2 are being transferred to Rule 24.1 while the current Rule 30.3 is being transferred to Rule 25.1.

Rule

30.1 The rule, which requires announcements to be published via a Regulatory Information System, is essentially the current Rule 2.9 with some minor amendments.

30.2 Under the Rules an offeror and the offeree are required to despatch certain documents and announcements to offeree shareholders. Under the definition of *"despatch"* in Part A of the Rules this requires such documents and announcements to be posted in hard copy to offeree shareholders or, with Panel consent, by other means. The Panel's practice has been to permit an offeror and the offeree to send documentation to offeree shareholders by electronic mail where such shareholders have provided the offeree with their email address for this purpose. Having regard to the widespread use of electronic communication the Panel is proposing under Rule 30.2 to permit documentation and announcements which are required to be sent to any person to be treated as being sent if they are:

(i) sent to the relevant person in hard copy form;

(ii) sent to the relevant person in electronic form; or

(iii) published on a website provided that the relevant person is sent a website notification no later than the date on which it is published on the website.

Acceptance forms, withdrawal forms, proxy cards and other forms connected with an offer will continue to be required to be published in hard copy form only and must not be published.

30.3 If a document, an announcement or any information is required to be sent to any person and it is sent by electronic form or published on a website, Rule 30.3 sets out, inter alia, the entitlement of that person to receive, on request, a hard copy of the relevant information and furthermore to request that all future information be sent to them in hard copy form. The remainder of Rule 30.3 addresses other aspects

associated with the provision of hard copy forms of documents, announcements or any information which are required to be sent to persons entitled to receive such information.

30.4 This rule has been transferred from Rule 2.4 of Part A of the Rules, with some minor amendments. The note on the latter rule has also been transferred as a note to Rule 30, with some minor amendments.

30.5 This rule has been transferred from the current Rule 19.7, with some minor amendments.

30.6 The rule regulates the use of website notifications and sets out, inter alia, the information which must be included in such notifications and the requirement that they be confined to factual and non-controversial information about an offer or a party to an offer and should not include any argument or opinion.

Because of the proposed amendments under Rule 30.2 the definition of *"despatch"* in Part A of the Rules is being deleted and new definitions of *"electronic form", "hard copy form*" and "*website notification"* are being included in Part A of the new Rules.

22. Rule 31 Timeframe of the offer

22.1 Amendments to Rule 31

Rule

31.2 Paragraphs (d) and (e) of the current rule are, in effect, being amalgamated into a renumbered paragraph (d) in order to clarify when the relevant notice is required to be sent to those offeree shareholders who have not accepted the offer.

31.4 Paragraph (a) is being amended with respect to extensions to the offer timetable in a competitive situation to include the 53rd day referred to in Rules 2.6(d) and (e) being the day by which a potential offeror must either announce a firm intention to make an offer or announce that it does not intend to make an offer.

31.5(d) The rule is being amended to require Panel consent for the inclusion of any reservation to a *"no extension statement"* the primary purpose for which is to ensure that the reservation meets the requirements of Rule 31.5(e). A similar amendment is being made to Rule 32.2(d) in relation to *"no increase statements".*

31.5(e) The rule will prohibit an offeror from making a *"no extension statement"* subject to a reservation to set the statement aside which depends solely on the subjective judgements by the offeror or its directors or is within their control. A similar rule is being included under Rule 32.2(e) in respect of *"no increase statements".* These amendments are

consistent with the requirement under Rule 2.5(d) that an offeror that has made a statement in relation to the terms of a possible offer must not include in that statement a reservation which is dependent upon the subjective judgements of the directors of the offeror.

31.9 Some minor amendments are being made to include QFBS statements and material acquisitions and disposals in the itemization of those announcements that ought not be made after Day 39 except with the consent of the Panel.

22.2 Amendments to the notes on Rule 31

Note 1 on Rule 31.6(a)

An addition to note 1 on Rule 31.6(a) states that where the Panel consents to an extension of Day 60, it will normally also grant an extension to or, if appropriate, re-set Day 39, Day 46 and Day 53.

Note 4 on Rule 31.6(a)

This new note states that the Panel will normally grant an extension to Day 60 of an offeror's timetable where the offeree board consents to such an extension and therefore subject to no unreserved *"no extension statement*" or *"no increase statement"* having been made, the offeror will normally be able to revise its offer notwithstanding that the original Day 46 has passed.

23. Rule 32 Revision of an offer

23.1 Amendments to Rule 32

Rule

32.1(b) Similar to the amendment to Rule 31.9 referred to above, some minor amendments are being made to include QFBS statements and material acquisitions and disposals in the itemization of those announcements that ought not be made by the offeror after the date from which it is precluded from revising its offer, except with the consent of the Panel.

32.2(d) A similar amendment is being made to that under Rule 31.5(d), as referred to above.

32.2(e) A similar amendment is being made to that under Rule 31.5(e), as referred to above.

32.5(b) The rule is being amended to clarify the obligations of the offeree in circumstances where the opinion from the representatives of the offeree's employees is not received by the offeree board in good time. In such circumstances the offeree will be required to publish the

opinion on a website and announce to a Regulatory Information Service that it has been so published.

32.6(c) This new rule will require the offeree to inform its employees, or their representatives, of their right to have a separate opinion on the revised offer appended to any offeree board circular published in relation to the revised offer.

23.2 Amendments to the notes on Rule 32

Note 3 on Rule 32.1

The existing note 3 is being replaced by a more comprehensive note clarifying how the Panel will interpret Rule 32.1(b). The note is derived from the Panel's announcement released on 25 November 2015 in which it set out how Rule 32.1(b) would be interpreted.

Note 4 on Rule 32.1

This is a new note which cross-refers to note 4 on Rule 31.6(a) referred to above.

Note 4 on Rule 32.2

A new note 4 is being added setting out the effect on the offer consideration of an offeree dividend that is paid or becomes payable after the offeror has made a *"no increase statement"* i.e. the offeror will normally be required to reduce the offer consideration by an amount equal to the dividend unless the offeror has stated that offeree shareholders will be entitled to retain the dividend in addition to the offer consideration.

24. Rule 35 Restrictions following offers

24.1 Amendments to Rule 35

Rule

35.1 The only material amendment being proposed to Rule 35 is the additional prohibition under Rule 35.1(g) which will prohibit an offeror which is subject to Rule 35.1 from purchasing, agreeing to purchase, or making any statement which raises or confirms the possibility that it is interested in purchasing assets which are significant to the offeree. Similar to the proposed amendment to Rule 2.8(c)(i)(7), this additional restriction is being included to avoid the possibility that an offeror might seek to circumvent the restrictions under Rule 35.1 by announcing instead that it was interested in purchasing the assets of the offeree thereby prolonging the siege of the offeree.

24.2 Amendments to the Notes on Rule 35

Notes 2 and 3 on Rule 35.1

The only material amendments being proposed to the notes on Rule 35 are these additional notes which confirm that the Panel will normally apply the same approach to Rule 35.1(f) and (g) as that set out in notes 5 and 4 on Rule 2.8 respectively.

25. Rule 36 Partial offers

25.1 Amendments to Rule 36

Rule

36.2(b) This rule is being amended to extend the prohibitions under the rule to include the actions prohibited under Rule 35.1(e),(f) and (g). The Panel is of the view that it is appropriate in the context of General Principle 6 to apply such prohibitions in the circumstances referred to in Rule 36.2(b).

36.2(d) The rule is being deleted as it is no longer required in light of the new PUSU regime being adopted under Rule 2.

25.2 Amendments to the Notes on Rule 36

Note 3 on Rule 36.1

This new note confirms that Panel consent is likely to be granted to a person to make a partial offer 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.

Note 2 on Rule 36.2

The current note 2 is being amended to confirm that 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.

Note 3 on Rule 36.2

The current note 3 on Rule 36.2 is being deleted as a result of the deletion of Rule 36.2(d).

26. Rule 38 Dealings by connected exempt principal traders

Amendments to Rule 38

The only material changes being made to Rule 38 are those set out in a new Rule 38.6 which extends the opening position disclosure requirements set out in Rule 8 to exempt principal traders connected with the offeror or the offeree which do not have recognised intermediary status or which do have such status but which hold any interest or short position in any relevant securities of the offeror or of the offeree in a proprietary capacity.

As a result of the above changes the Rule 38.5 Disclosure Forms in Appendix 3 of the Rules are being amended. The amended Disclosure Forms are set out in Appendix 3.

27. Rule 41 / Appendix 4 Takeovers by scheme of arrangement

27.1 Amendments to the Notes on Rule 41

Note 1 on Rule 41.1

The Panel Executive has had a practice over many years of reviewing a draft of the scheme of arrangement document prior to it being circulated to offeree shareholders. The purpose of such a practice is to avoid a situation where the scheme timetable might be disturbed as a result of the Panel having a material issue with the content of the document following its publication which cannot be resolved without the offeree reverting to the High Court prior to the holding of the court meeting. A new note 1 on Rule 41.1 states that while the Panel Executive may review and comment on documents provided to the Panel under Rule 41.1, such review and comment should not be considered to constitute approval of any such document or any part of its contents for any purpose of the Rules and the fact that the Panel Executive has or has not reviewed or commented on any such document will not limit the statutory rights of the Panel.

27.2 Amendments to Appendix 4

Section 3(1) & (2)	Under the new PUSU regime outlined above, Rules 2.6(d) and (e) prescribe when a potential offeror must clarify their intentions regarding an offer. These rules are being replaced in a scheme by the new rules set out in paragraphs (1) and (2) of section 3 and, in summary, will require the potential offeror to clarify its intentions no later than 5.00pm on the seventh day prior to the date of the general meeting.
Section 3(2)	The current section 3(2) is being deleted as the amendments to the current Rule 2.6 (moved to Rule 2.10) render it unnecessary.

Proposed Amendments to the SARs

The proposed amendments to the SARs are not regarded as being very material and, in the main, derive from amendments being made in order to (i) bring the SARs into line with amendments made to the Rules published in 2014 and (ii) to make the SARs consistent with amendments currently being proposed to the Rules.

Rule

2(a)	The revised Rules published following this consultation will apply to the SARs.
4	The term *"associates"* is being replaced by *"persons acting in concert"* in order to bring the SARs into line with amendments made to the Rules published in 2014.
5(a)(iii) & (iv)	These amendments are being made for the same reasons outlined in Rule 5.2(a)(ii)-(iv) of the Rules, referred to above.
5(b)(i)	This amendment is being made in line with similar amendments being proposed to the Rules.
5(c)	The term *"market maker"* is being replaced by *"principal trader"* in order to bring the SARs into line with amendments made to the Rules published in 2014.
6(a)	The disclosure requirements are being amended to make them consistent with those under the Rules.
8(b)	The amendments update the rule for the Companies Act 2014 and, similar to 6(a) above, also bring the disclosure requirements into line with the Rules.