

*IRISH TAKEOVER PANEL ACT, 1997*

*TAKEOVER RULES*

*AND*

*SUBSTANTIAL ACQUISITION RULES*

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ISBN 978-0-9530922-9-1

Published by Irish Takeover Panel,  
Lower Ground Floor, 76 Merrion Square, Dublin 2, Ireland.

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## **RULE 1. CITATION, COMMENCEMENT AND REPEAL**

### **1.1 CITATION**

**These Rules may be cited as the Irish Takeover Panel Act, 1997, Takeover Rules, 2022.**

### **1.2 COMMENCEMENT**

**These Rules shall come into operation on 22 July 2022.**

### **1.3 REPEAL**

**The Irish Takeover Panel Act, 1997, Takeover Rules, 2013 are hereby repealed.**

### **1.4 TRANSITIONAL PROVISION**

**Notwithstanding their repeal, the rules referred to in Rule 1.3 shall continue to apply to all takeovers and other relevant transactions which are in being on the date on which these Rules come into operation.**



## RULE 2. INTERPRETATION

## 2.1 DEFINITIONS

(a) In these Rules, the following words and expressions shall have the following meanings unless the context otherwise requires:

the **“Act”** means the Irish Takeover Panel Act, 1997;

**“acting in concert”** has the meaning assigned to it by paragraph (b)(v);

**“affiliated person”**, in relation to another person (the **“Parent”**), means any undertaking in respect of which the Parent:

(i) has a majority of the shareholders’ or members’ voting rights; or

(ii) is a shareholder or member and at the same time has the right to appoint or remove a majority of the members of its board of directors; or

(iii) is a shareholder or member and alone controls a majority of the shareholders’ or members’ voting rights pursuant to an agreement entered into with other shareholders or members;

and for the purposes of this definition the rights of a Parent as regards voting, appointment or removal shall include the rights of any other person which is an affiliated person of the Parent and the rights of any person acting in that person’s own name but on behalf of the Parent or of any affiliated person of the Parent;

**“alternative offer”** means a right granted under an offer by the offeror, or by a third party at the request of the offeror, to acceptors of the offer to elect to receive, instead of the whole or part of the basic consideration available under the offer, a consideration different from that basic consideration;

**“child”** includes a step-child and an adopted child, and **“parent”**, **“brother”** and **“sister”** shall be construed accordingly;

**“company”** has the meaning assigned to it by the Act;

**“civil partner”** has the same meaning as in section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

**“cohabitant”** has the same meaning as in section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

**“competent authority”** means the authority designated by a Member State under Article 4 of the Directive to supervise takeover bids for the purposes of the rules which it makes or introduces pursuant to the Directive; under the Regulations the Panel has been designated by the State as competent authority;

**“Competition Act”** means the Competition Act, 2002;

**“control”**, in relation to a relevant company, has the meaning assigned to it by the Act and, in relation to a company which is not a relevant company, shall have the same meaning, and **“to control”** and cognate words and terms, in relation to any company, shall be construed accordingly;

**“course of the offer”**, in relation to an offer, means the period commencing with the commencement of the offer period and ending at the earliest of the following:

- (i) where, in the case of a proposed or possible offer, the offeror announces that the offer will not be made, the time of that announcement;
- (ii) the time at which the offer ceases to be open for acceptance or lapses; and
- (iii) where, in the case of an offer or possible offer the offer period relative to which is deemed (otherwise than for certain excepted purposes) to have commenced at the time of the lapse in accordance with Rule 12(b)(i) of Part B of an earlier offer<sup>1</sup> by the same offeror in respect of the same offeree, the determination of the European Commission or the competent authority concerned prohibits the concentration concerned, the time of the communication of that determination to the offeror;

and **“course of an offer”** shall be construed accordingly;

**“Court”** means the High Court;

**“dealing”**, in relation to relevant securities, includes the following:

- (i) the acquisition or disposal of such securities or of the right (whether absolute or conditional) to exercise or to control the exercise of the voting rights (if any) attaching to such securities;
- (ii) the taking, granting, acquisition, disposal, entering into, closing out, termination, exercise (by either party) or variation of an option (including a traded option contract) in respect of any such securities;
- (iii) subscribing or agreeing to subscribe for such securities;
- (iv) the exercise of conversion or subscription rights conferred by any security or any other instrument, whether in respect of new or existing relevant securities;

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<sup>1</sup>See Rule 2.1(c) of Part A.

(v) the acquisition of, disposal of, entering into, closing out, exercise (by either party) of any rights under or variation of, a derivative referenced, directly or indirectly, to such securities;

(vi) entering into, terminating or varying the terms of any agreement to purchase or sell such securities;

(vii) the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree or an offeror; and

(viii) any action (not included in any of the above subparagraphs) which results or may result in an increase or decrease in the number of such securities in which a person is interested or in respect of which he or she has a short position;

**“derivative”** includes any financial product the value of which in whole or in part is determined directly or indirectly by reference to the price of an underlying security;

the **“Directive”** means Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

**“directors”**, in relation to a company, includes a person in accordance with whose directions or instructions any one or more of the directors of that company are accustomed to act unless such director or directors are accustomed so to act by reason only that he or she or (as the case may be) they do so on advice given by that person in a professional capacity;

**“discretionary fund manager”** means a fund manager which manages investment accounts on a discretionary basis;

**“EEA”** means the European Economic Area;

**“EEA Agreement”** means the Agreement on the EEA signed at Oporto on 2 May 1992, as amended for the time being;

**“EEA State”** means a state which is a contracting party to the EEA Agreement;

**“employee representative”** means:

(i) a representative of an independent trade union, where that trade union has been recognised by the offeror or the offeree in respect of some or all of its employees; and

(ii) any other person who has been elected or appointed by employees to represent employees for the purposes of information and consultation;

**“equity share capital”** has the meaning assigned to it by section 7 of the Companies Act, 2014;

**“Euroclear System”** means the securities settlement system operated by Euroclear Bank SA/NV (or its nominee) or any replacement thereof from time to time;

**“European Merger Regulation”** means Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L24, 29.01.2004);

**“exempt fund manager”** means a discretionary fund manager which has been recognised by the Panel as an exempt fund manager for the purposes of these Rules, has been notified in writing of that fact by the Panel and has not been notified by the Panel of the withdrawal of such recognition;

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

**“final closing date”**, in relation to an offer, means (subject to any relevant extension pursuant to Rule 31.3 of Part B) the earlier of the 60th day after the day (the “60th day”) on which the initial offer document was sent and any earlier date beyond which the offeror has stated that the offer will not be extended unless it has become unconditional as to acceptances by that date and in respect of which the offeror has not withdrawn that statement in accordance with the provisions of Rule 31.5;

**“first response circular”** has the meaning ascribed to it by Rule 25.1 and includes, where an offer document includes the views of the offeree board and the other information required by Rule 25 of Part B, the relevant parts of the offer document;

**“General Principles”** means the principles set out in the Schedule to the Act;<sup>2</sup>

**“holding company”** has the meaning assigned to it by section 8 of the Companies Act, 2014;

**“interest”** and **“interested”**, in relation to relevant securities, have the meaning assigned to them by Rule 2.5;

**“Euronext Dublin”** means The Irish Stock Exchange plc;

**“Member State”** means a Member State of the European Union or an EEA State;

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<sup>2</sup>General Principle 7 does not apply to Shared Jurisdiction Companies.

the **“Minister”** means the Minister for Enterprise, Trade and Employment;

**“non-equity share capital”** means share capital which is not equity share capital;

**“offer”** means an offer within the meaning of the Act which is made generally to holders of a class of voting securities of a relevant company to acquire securities of that class, and, where the Panel is the competent authority to supervise a takeover bid in respect of a company, includes a bid in respect of that company;

**“offer period”**, in relation to an offer, means, subject as provided below, the period commencing at the earliest of the following:

- (i) the time of the first announcement of that offer as a proposed offer or a possible offer (with or without terms);
- (ii) where the Panel determines that an offer period in respect of a relevant company has commenced or should commence, the time of that commencement specified in the announcement of that determination;
- (iii) where the Panel, being of the opinion that in the circumstances prevailing in relation to a relevant company it is appropriate so to do, directs that an offer or possible offer be announced, the time of commencement of the offer period relative to that offer specified in that direction; and
- (iv) in the case of an offer under Rule 9 or Rule 37 of Part B, the time of the transaction which gives rise (or which, subject only to the issue in the State of a governmental or regulatory authorisation, consent, approval or clearance, will give rise) to an obligation to make the offer,

and ending at the earlier of the following:

- (1) where, in the case of a proposed or possible offer, the offeror announces that the offer will not be made, the time of that announcement; and
- (2) the first closing date or, if later, the time at which the offer becomes unconditional as to acceptances or lapses, whichever first occurs;

provided that:

- (A) an announcement pursuant to Rule 2.2(f) of Part B shall be deemed, for the purposes of this definition, to be the announcement of a possible offer in respect of the relevant company concerned;

(B) where, at the time at which the offer period relative to an offer (the “**later offer**”) commences, an offer period already subsists relative to another offer<sup>3</sup> (the “**earlier offer**”) in respect of the same offeree, then for the purposes only of Rules 6.1, 11, 24.4(c) and 25.4(c) of Part B the offer period relative to the later offer shall be deemed to have commenced at the same time as the offer period relative to the earlier offer; and

(C) where an offer lapses<sup>4</sup> in accordance with Rule 12(b)(i) of Part B, an offer period (the “**new offer period**”) relative to any new offer or possible offer which the offeror may make or propose to make in respect of the same offeree shall be deemed to commence at the time of such lapse (except that for the purposes only of Rules 6.1, 9.4, 11, 24.4(c), 25.4(c) and 37(b) of Part B the new offer period shall be deemed to have commenced at the time at which the offer period relative to the lapsed offer commenced) and, if the determination of the European Commission or the competent authority concerned prohibits the concentration concerned, the new offer period, if it has not previously ended in accordance with the foregoing provisions of this definition, shall end at the time of the communication of that determination to the offeror;

“**offeree**” has the meaning assigned to it by the Act and, where the Panel is the competent authority to supervise a takeover bid in respect of such company, includes a company:

- (i) any transferable voting securities of which are the subject of a bid that has been made or is intended or required to be made; or
- (ii) in respect of which, or in connection with which, a person does any act in contemplation of making a bid to holders of transferable voting securities of that company;

“**offeree board**” means the board of the offeree;

“**offeror**” has the meaning assigned to it by the Act and, where the Panel is the competent authority to supervise a takeover bid in respect of a company, includes a person who makes, or intends or is required to make, a bid in respect of that company or does any act in contemplation of making such a bid;

“**opening position disclosure**” means a disclosure made in accordance with Rule 8.1(a), Rule 8.1(b), Rule 8.3(a) or Rule 38.6;

“**ordinary course profit forecast**” means a profit forecast published by the offeree or a securities exchange offeror in accordance with its established practice and as part of the ordinary course of its communications with its shareholders and the market;

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<sup>3,4</sup>See Rule 2.1(c) of Part A.

**“other relevant transaction”** has the meaning assigned to it by the Act and includes the transactions specified in Rule 3.1;

the **“Panel”** means the Irish Takeover Panel (registered number 265647);

**“partial offer”** means an offer made to holders of a class of securities of a relevant company to acquire some but not all of the securities of that class;

**“parties to a takeover or other relevant transaction”** has the meaning assigned to it by the Act and includes the persons specified in Rule 3.2;

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

**“profit estimate”** means a profit forecast for a financial period which has expired and for which audited results have not yet been published;

**“profit forecast”** means a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word “profit” is not used, and includes a profit estimate;

**“quantified financial benefits statement”** means either:

- (i) a statement by a securities exchange offeror or the offeree quantifying any financial benefits expected to accrue to the enlarged group if the offer is successful; or
- (ii) a statement by the offeree quantifying any financial benefits expected to accrue to the offeree from cost saving or other measures and/or a transaction proposed to be implemented by the offeree if the offer is withdrawn or lapses;

**“quoted security”** means a security the trading of which on a recognised market is for the time being authorised by the appropriate authority in that recognised market and **“quoted”**, **“unquoted”** and **“quotation”** in relation to a security shall be construed accordingly;

**“receiving agent’s certificate”** has the meaning assigned to it by Rule 10.6 of Part B;

**“recognised intermediary”** means that part of the trading operations of a bank or other financial institution which has been recognised by the Panel as a recognised intermediary for the

purposes of these Rules, has been notified in writing of that fact by the Panel and has not been notified by the Panel of the withdrawal of such recognition;

**“recognised market”** means a regulated market, a recognised stock exchange, a securities market specified in regulations made by the Minister for the purposes of section 2(c) of the Act and any such other securities market as the Panel may recognise as a recognised market for the purposes of this definition;

**“recognised stock exchange”** has the meaning assigned to it by the Act;

**“regulated market”** has the meaning assigned to it by the Regulations;

**“Regulations”** means the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006) which transposed the Directive into law, and **“Regulation”** shall be construed accordingly;

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

**“relevant company”** has the meaning assigned to it by the Act and includes a company which, by virtue of Regulation 4(3), is to be regarded as a relevant company for the purposes of the application of the Act;

**“relevant securities”** means, in relation to an offer:

- (i) securities of the offeree which are the subject of the offer or which confer voting rights;
- (ii) equity share capital of the offeree or the offeror;
- (iii) securities of the offeror which confer on their holders substantially the same rights as are conferred by any securities to be issued by the offeror as consideration under the offer; and
- (iv) securities or any other instruments of the offeree or the offeror conferring on their holders rights to convert into or to subscribe for new securities of any of the foregoing categories;

and **“relevant security”** shall be construed accordingly; and references to relevant securities of an offeror shall include references to securities of any holding company of that offeror and to options (including traded options) in respect of, and derivatives referenced to, any securities of any such holding company;



**“reverse takeover transaction”** means a transaction entered into by a relevant company whereby the relevant company acquires securities of another company, a business or assets of any kind and pursuant to which the relevant company will or may be obliged to increase by more than 100% its existing issued share capital that confers voting rights, and references to the entry by a relevant company into a reverse takeover transaction shall be construed accordingly;

**“rights”**, in the context of rights over securities, means an interest in such securities (where “interest” has the same meaning as in the definition of “interest in a security” in the Act);

**“Rules”** means these rules in their present form as set out in Parts A and B hereof or with and subject to any amendment to them for the time being in force;

**“securities exchange offer”** means an offer under which the consideration includes securities of a company (the “issuer”) other than loan stock or loan notes where such stock or notes are offered as an alternative to cash consideration (unless such stock or notes confer on their holders either substantially the same rights as are conferred by any other securities of the issuer for the time being in issue or the right to convert into or to subscribe for any such other securities or any equity share capital of the issuer);

**“security”** has the meaning assigned to it by the Act;

**“share”** means (subject to paragraph (b)(vi)) a share in the share capital of a company and includes capital stock of a company;

**“shareholder”** has the meaning assigned to it by the Act;

**“Stock Exchange”** means, in relation to a relevant company, the recognised stock exchange or (as the case may be) the securities market (being a securities market specified in regulations made by the Minister for the purposes of section 2(c) of the Act) on which securities of that company are quoted; where securities of a relevant company are quoted on more than one such recognised stock exchange or securities market, “Stock Exchange”, in relation to that company, means each of those exchanges and markets on which the securities are quoted;

**“subsidiary”** has the meaning assigned to it by section 7 of the Companies Act, 2014;

**“substantial acquisition of securities”** has the meaning assigned to it by Rule 3 of the Substantial Acquisition Rules;

**“Substantial Acquisition Rules”** means the Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, 2022;

**“takeover”** has the meaning assigned to it by the Act;

**“takeover bid”** or **“bid”** has the meaning assigned to it by the Regulations;

**“takeover scheme of arrangement”** or **“takeover scheme”** means a compromise or arrangement between a relevant company and its members or any class of them which is made or proposed to be made pursuant to section 450 of the Companies Act, 2014 and which constitutes a takeover of that company;

**“tender offer”** means an invitation made by a person by public advertisement to holders of a class of securities of a relevant company to tender securities of that company, up to a stated number, for purchase by that person, on terms stipulated in the advertisement;

**“transferable voting security”** means, in relation to a company, a voting security which is transferable;

**“unconditional as to acceptances”**, in relation to an offer, shall be construed in accordance with Rule 10.6 of Part B;

**“voluntary offer”** means an offer which is not an offer under Rule 9 or Rule 37 of Part B;

**“voting right”** has the meaning assigned to it by the Act;

**“voting security”**, in relation to a company, means a security conferring voting rights in that company;

**“website notification”** means a document sent in either hard copy form or electronic form to a person to whom a document, an announcement or any information is required to be sent, giving such person notice of the publication of the document, announcement or information on a website and providing details of the relevant website.

(b) In these Rules:

(i) references to purchases or other acquisitions of shares shall include, where relevant, purchases or other acquisitions of shares assented to an offer;

(ii) for the avoidance of doubt, references to securities acquired or held by persons acting in concert or by persons acting in concert with another person shall include references to securities acquired or (as the case may be) held by any one or more of such persons;

(iii) a company shall be deemed to be an **“associated company”** of another company if that other company owns or controls 20% or more of the equity share capital of the first-mentioned company;

(iv) a **“competitive situation”** shall be deemed to arise in relation to an existing offer by any person (1) if an announcement is made of a proposed or possible offer (with

or without terms) by another person, whether named or not, in respect of the same offeree or (2) if the Panel so determines in any other circumstances in any particular case;

(v) without prejudice to Rule 3.3 of Part A, a reference to acting in concert shall, in relation to a takeover bid, be construed in accordance with the meaning assigned to the expression “persons acting in concert” by Regulation 8(2) and shall, in relation to a takeover (not being a bid) or other relevant transaction, be construed in accordance with the meaning assigned to the expression “acting in concert” by the Act;

(vi) where the context so requires, references to shares (except in the expressions share capital, equity share capital and non- equity share capital) shall include securities other than shares;

(vii) references to irrevocable commitments and letters of intent include, respectively, irrevocable commitments and letters of intent:

(1) to accept or not to accept (or to procure that any other person accept or not accept) an offer; or

(2) to vote (or to procure that any other person vote) in favour of or against a resolution of an offeror or the offeree (or of its shareholders) in the context of an offer, including a resolution to approve or to give effect to a takeover scheme;

(viii) references to a document, an announcement or any information being sent in “electronic form” mean that it is:

(1) sent by means of electronic equipment for the processing or storage of data; and

(2) entirely transmitted and conveyed by wire, radio, optical or other electromagnetic means, provided that the sender reasonably considers that the form in which it is sent, and the means by which it is sent, will enable the recipient to read and retain a copy of it; and

(ix) references to a document, an announcement or any information being sent in “hard copy form” mean that it is sent in a paper copy or similar form capable of being read.

(c) References to an offer in:

(i) the expression “**an earlier offer**” in paragraph (iii) of the definition of “**course of the offer**” in Rule 2.1(a) of Part A;

(ii) the expression “**another offer**” in paragraph (B), and the expression “**where an offer lapses**” in paragraph (C), of the definition of “**offer period**” in Rule 2.1(a) of Part A;

- (iii) the expression “**competing offer**” in subparagraphs (iii)(2) and (iii)(3) of Rule 5.2(a) of Part B; and
- (iv) Rule 20.3 of Part B,

shall be construed to include references to a takeover scheme and accordingly associated references in those subparagraphs, paragraphs or rule to “offeree”, “offeree board”, “offeror” and the “first closing date” of an offer shall be construed as references to, respectively, the relevant company to which the takeover scheme relates, the board of that company, the person or persons expected to acquire control of that company by virtue of the scheme and the date of the meeting of shareholders of that company summoned or to be summoned under section 450 of the Companies Act, 2014, to vote in respect of the scheme.

## 2.2 CONNECTED FUND MANAGERS AND CONNECTED PRINCIPAL TRADERS

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

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

and “**connected fund manager**”, “**connected principal trader**” and cognate expressions are to be construed accordingly.

## 2.3 DATE, DAY AND TIME

In these Rules, unless the context otherwise requires:

- (a) a reference to the date of an event shall be construed as referring to the time of occurrence of that event on the day on which it occurs;
- (b) a reference, in connection with a takeover or other relevant transaction, to a business day shall be construed as referring to a day

on which the primary market (as defined in paragraph (d)) on which relevant securities of the relevant company concerned are quoted is open for the transaction of business;

(c) where a period of time is expressed to begin on or be calculated from or after a particular day or event, that day or (in the case of an event) the day on which that event occurs shall be deemed to be excluded from such period, and, where a period of time is expressed to end on or be calculated to a particular day or event, that day or (in the case of an event) the day on which that event occurs shall be deemed to be included in such period; provided that the foregoing provisions of this paragraph (c) shall not apply to the definition of an “offer period” or of the “course of the offer” or to any period of time which is expressed or calculated in any way by reference to an offer period; and

(d) where, in relation to a takeover or other relevant transaction, a Rule requires compliance by a specified time and there are time-zone differences or variations in trading days between the securities markets concerned, such compliance shall, so far as is practicable, be by reference to the primary market on which relevant securities of the relevant company concerned are quoted, and actions required relative to other markets shall be timed as nearly as is practicable to the time of corresponding actions on the primary market. In case of doubt regarding the requirements of this paragraph (d) in the circumstances of a particular case, the person responsible for compliance shall consult the Panel. For the purposes of this paragraph “**primary market**” means:

(i) if the relevant securities of the relevant company concerned are quoted on Euronext Dublin: Euronext Dublin; or

(ii) if such securities are not quoted on Euronext Dublin:

(A) the securities market specified in regulations made by the Minister for the purposes of section 2(c) of the Act on which such securities are quoted; or

(B) if such securities are quoted on two or more of the securities markets so specified:

(1) that one of those securities markets on which the relevant company is generally recognised as having its primary quotation; or

(2) if the relevant company is not generally recognised as having its primary quotation on one only, or on any, of those securities markets, that one of those securities markets on which relevant securities of the relevant company were first quoted.

## 2.4 GENERAL

In these Rules, unless the context otherwise requires:

- (a) words in the singular shall include the plural and vice versa;
- (b) words importing the masculine, feminine or neuter gender shall include each of the other genders;
- (c) a reference to a Part shall be construed as referring to a Part of these Rules; a reference to a Rule or an Appendix shall be construed as referring to a Rule or (as the case may be) an Appendix contained in the Part of these Rules in which the reference occurs; a reference in a Rule, a sub-Rule or an Appendix to a paragraph shall be construed as referring to a paragraph of that Rule, sub-Rule or (as the case may be) Appendix; and a reference to a subparagraph shall be construed as referring to a subparagraph of the paragraph in which the reference occurs;
- (d) a reference to a statute or statutory provision shall be construed as if it referred also to that provision as for the time being amended or re-enacted;
- (e) the word **“person”** shall include any body of persons corporate or incorporate; and
- (f) A reference to an association or organisation of or representing members of a profession shall be construed to include successors to such association or organisation and such other associations or organisations as may be designated by the Panel from time to time for that purpose, either as substitutes for or additions to such association or organisation; and references to a publication issued by such an association or organisation shall be construed to include such other publications as may be designated by the Panel from time to time for that purpose, either as substitutes for or additions to such publication.

No heading placed at the head or beginning of a Part, Rule, sub-Rule, Appendix or provision or a group of Rules or provisions to indicate the subject, contents or effect of such Part, Rule, sub-Rule, Appendix or provision or group shall be taken to be part of these Rules or be considered in relation to the construction or interpretation of these Rules or any portion of them.

## 2.5 INTERESTS IN RELEVANT SECURITIES

- (a) Meaning of interest in a relevant security

In these Rules, for the purpose of determining whether a person has an **“interest in a relevant security”** or is **“interested in a relevant security”**:

- (i) that person shall be deemed to have an “interest”, or to be “interested”, in that security if and only if he or she has a long position in that security; and
- (ii) a person who has only a short position in a relevant security shall be deemed not to have an interest, nor to be interested, in that security.

**(b) Long position and short position**

(i) A person shall be deemed to have a long position in a relevant security for the purposes of paragraph (a) if he or she directly or indirectly:

- (1) owns that security; or
- (2) has the right or option to acquire that security or to call for its delivery; or
- (3) is under an obligation to take delivery of that security; or
- (4) has the right to exercise or control the exercise of the voting rights (if any) attaching to that security; or, to the extent that none of subparagraphs (1) to (4) above applies to that person, if he or she:
- (5) will be economically advantaged if the price of that security increases; or
- (6) will be economically disadvantaged if the price of that security decreases,

irrespective of:

- (A) how any such ownership, right, option, obligation, advantage or disadvantage arises and including, for the avoidance of doubt and without limitation, where it arises by virtue of an agreement to purchase, option or derivative; and
- (B) whether any such ownership, right, option, obligation, advantage or disadvantage is absolute or conditional and, where applicable, whether it is in the money or otherwise;

provided that a person who has received an irrevocable commitment to accept an offer (or to procure that another person accept an offer) shall not, by virtue only of subparagraph (2) or (3) above, be treated as having an interest in the relevant securities that are the subject of the irrevocable commitment.

(ii) A person shall be deemed to have a short position in a relevant security for the purposes of paragraph (a) if he or she directly or indirectly:

(1) has the right or option to dispose of that security or to put it to another person; or

(2) is under an obligation to deliver that security to another person; or

(3) is under an obligation either to permit another person to exercise the voting rights (if any) attaching to that security or to procure that such voting rights are exercised in accordance with the directions of another person, or,

to the extent that none of subparagraphs (1) to (3) above applies to that person, if he or she:

(4) will be economically advantaged if the price of that security decreases; or

(5) will be economically disadvantaged if the price of that security increases,

irrespective of:

(A) how any such right, option, obligation, advantage or disadvantage arises and including, for the avoidance of doubt and without limitation, where it arises by virtue of an agreement to sell, option or derivative; and

(B) whether any such right, option, obligation, advantage or disadvantage is absolute or conditional and, where applicable, whether it is in the money or otherwise.

(c) **Gross interests**

(i) The number of relevant securities of any class in which a person shall be deemed to have an interest is, subject to subparagraphs (ii) and (iii), the gross number resulting from the aggregation of the number of relevant securities of that class falling within each of subparagraphs (1) to (6) of paragraph (b)(i), without deduction of short positions.

(ii) If the interest of a person in relevant securities of any class falls within more than one subparagraph of paragraph (b) (i), he or she shall be deemed to be interested in the number of relevant securities of that class disclosed by whichever of those subparagraphs discloses the highest number of such securities.



(iii) Offsetting positions in respect of any class of relevant securities may not be netted off against each other except with the consent of the Panel.

(d) Number of relevant securities concerned

(i) Where a person is interested in relevant securities by virtue of an agreement to purchase, an option or a derivative but the number of those relevant securities is not fixed, unless the Panel determines otherwise in any particular case he or she shall be deemed to be interested in the maximum possible number of those securities.

(ii) Where a person is interested in relevant securities by virtue of a derivative and the value of the derivative is determined by reference to the price of a number of such relevant securities multiplied by a particular factor, unless the Panel determines otherwise in any particular case he or she shall be deemed to be interested in the number of reference securities multiplied by that factor.

(iii) Where a person is interested in relevant securities by virtue of a derivative but the derivative is not referenced to any stated number (or maximum number) of those relevant securities, unless the Panel determines otherwise in any particular case he or she shall be deemed to be interested in the gross number of those securities to changes in the price of which he or she has, or may have, economic exposure.

(e) New shares

Where a person is interested in securities or other instruments conferring rights to convert into or to subscribe for new shares of a class of relevant securities, he or she shall be deemed not to be interested in any new shares that may be issued upon the exercise of those rights. The acquisition by that person of new shares when they are issued upon the exercise of those conversion or subscription rights shall be deemed to be an acquisition of an interest in the new shares.

(f) Acquisitions of interests in relevant securities

References to a person acquiring an interest in relevant securities shall be construed to include any dealing or other transaction that results in an increase in the number of relevant securities in which that person is deemed to be interested.

### RULE 3. SPECIFICATIONS AND PRESUMPTIONS

#### 3.1 OTHER RELEVANT TRANSACTIONS<sup>5</sup>

The following shall be “**relevant transactions**” for the purposes of the Act:

- (a) a substantial acquisition of securities;
- (b) a partial offer or tender offer relating to voting securities of a relevant company which, if accepted in full in the case of a partial offer or if subscribed in full in the case of a tender offer, might result in the offeror under the partial offer or (as the case may be) the purchaser under the tender offer and any parties acting in concert with it holding in the aggregate less than 30% of the voting rights in that company;
- (c) a reverse takeover transaction (not being a takeover of the relevant company which enters into the reverse takeover transaction);
- (d) an agreement or transaction made between two companies, at least one of which is a relevant company, and relating to the acquisition of voting securities in that relevant company, whereby such companies become associated wholly or partly by virtue of the shareholders, collectively or otherwise, of each of the companies acquiring the right to participate directly or indirectly in voting at general meetings of the other company or to influence in any respect the result of voting at such general meetings (not being a takeover of the relevant company concerned);
- (e) an agreement or transaction whereby or in consequence of which the aggregate percentage of the voting rights in a relevant company conferred by securities held by any person, or any persons acting in concert, who control the company is or may be increased;
- (f) an agreement or transaction in relation to the acquisition of voting securities of a relevant company which is prohibited by Rule 5 of Part B (not being a takeover of the relevant company); and
- (g) any offer to acquire voting securities of a relevant company (not being an offer specified above or a takeover of the relevant company).

#### 3.2 PARTIES TO A TAKEOVER OR OTHER RELEVANT TRANSACTION

The following persons shall be “**parties to a takeover or other relevant transaction**” for the purposes of the definition of that expression in the Act, in addition to those persons specified as such in section 1 of the Act;

- (a) an underwriter of an offer;

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<sup>5</sup>Rule 3.1 is not applicable to Shared Jurisdiction Companies.

- (b) a person acting as receiving agent to an offer;
- (c) a person acting as registrar of an offeree;
- (d) a person who is privy to confidential price-sensitive information concerning an offer or contemplated offer;
- (e) holders of securities, and persons interested in relevant securities, of an offeror or an offeree;
- (f) in the case of a reverse takeover transaction or contemplated reverse takeover transaction: the relevant company which enters or contemplates entering into the reverse takeover transaction; the directors of that company; holders of securities of that company; the persons to whom shares in such a company are issued or to be issued pursuant to the reverse takeover transaction; and the directors of any of the above-mentioned persons which is a company;
- (g) in the case of a substantial acquisition of securities or contemplated substantial acquisition of securities: the person, or persons acting in concert, making or contemplating making the substantial acquisition of securities; the directors of any of the above-mentioned persons which is a company; the relevant company securities of which are or are to be the subject of the substantial acquisition of securities; the directors of that company; and persons from whom securities the subject of the substantial acquisition of securities are or are to be acquired;
- (h) in the case of a tender offer or contemplated tender offer, the person, or persons acting in concert, seeking or proposing to seek to acquire securities pursuant to the tender offer; the directors of any of the above-mentioned persons which is a company; the relevant company securities of which are or are to be the subject of the tender offer; the directors of that company; and holders of securities to whom the tender offer is or is to be addressed;
- (i) in the case of an agreement or transaction or proposed agreement or transaction of the kind specified in paragraph (d) of Rule 3.1 or which, but for the fact that it constitutes a takeover, would be an agreement or transaction or proposed agreement or transaction of that kind: the companies which become or contemplate becoming associated by such an agreement or transaction; the directors of each such company; and holders of securities of each such company;
- (j) in the case of an agreement or transaction or a proposed agreement or transaction of the kind specified in paragraph (e) of Rule 3.1: the person, or persons acting in concert, who are referred to in that paragraph; the directors of any of the above-mentioned persons which is a company; the relevant company which is referred to in that paragraph; and the directors of that company;

(k) in the case of a takeover scheme of arrangement: the relevant company concerned; the holders of securities of that company who are or will be affected by the takeover scheme; the directors of that company; the person or persons who have acquired or are expected to acquire control of that company by virtue of the takeover scheme; any person acting in concert with that person or with any of those persons; the directors of any of the above-mentioned persons which is a company; and any person who, in connection with the takeover scheme, initiates or takes any other step in any proceedings in the Court under section 450 of the Companies Act, 2014 or otherwise;

(l) in the case of an agreement or transaction or contemplated agreement or transaction of the kind specified in paragraph (f) of Rule 3.1: the person, or persons acting in concert, making or entering into or contemplating making or entering into the agreement or transaction; the directors of any of the above-mentioned persons which is a company; the relevant company, securities of which are or are to be the subject of the agreement or transaction; the directors of that company; and holders of such securities;

(m) a person acting in concert with the offeree, the directors of the offeree, the holders of securities of the offeree or the directors of the offeror; and

(n) any person acting as an adviser to any of the persons specified in paragraphs (a) to (m) in relation to the takeover or other relevant transaction concerned.

### **3.3 ACTING IN CONCERT**

(a) For all purposes of these Rules, a person and each of its affiliated persons shall be deemed to be acting in concert, all with each other.

(b) For all purposes of these Rules and without prejudice to paragraph (a), the persons described in each of the following paragraphs shall be presumed to be acting in concert with other persons described in the same paragraph as respects a takeover or other relevant transaction until the contrary is established to the satisfaction of the Panel:

(i) a company, its holding company, its subsidiaries and subsidiaries of its holding company, every associated company of any of the foregoing companies, and every company of which any of the foregoing companies is an associated company: all with each other;

(ii) a company, and each company with which the first mentioned company is presumed in accordance with subparagraph (i) to be acting in concert, with (1) each of the directors of the first mentioned company; (2) the spouse, civil partner, cohabitant, parents, brothers, sisters and children of each such director; (3) the trustees of every trust (including a discretionary trust) of which any such director or any such member of his or her family is a beneficiary or a potential beneficiary; and (4) every company which is controlled by any one or more of such directors, such members of their families and the trustees of all such trusts;

(iii) a company, and each company with which it is presumed in accordance with subparagraph (i) to be acting in concert, with the trustees of every pension scheme (other than an industry-wide scheme) in which the first mentioned company participates;

(iv) a fund manager (including an exempt fund manager) and persons controlling, controlled by or under the same control as such fund manager with any other person (including a collective investment scheme) where such fund manager manages investments on a discretionary basis on behalf of such other person, in respect of the relevant investment accounts;

(v) a financial or other professional adviser (including a stockbroker) and, subject to Rule 7.2(b) of Part B, persons controlling, controlled by or under the same control as such adviser (except in any such case in the capacity of an exempt fund manager or exempt principal trader) with such adviser's client; provided that, in the case of an adviser which is a partnership, the presumption shall apply to those partners and professional staff who are actively engaged in relation to the transaction concerned or who are customarily engaged in the affairs of the relevant client or who have been engaged in those affairs within the period of two years prior to the commencement of the relative offer period in the case of an offer or to the time of the transaction in any other case;

(vi) during the course of an offer in respect of a relevant company, or whilst the directors of a relevant company have reason to believe that an offer in respect of that company may be made in the near future, or whilst a relevant company is in the course of redeeming or purchasing its own voting securities, or whilst the directors of a relevant company propose that that company redeem or purchase its own voting securities: directors of the company with (1) each other; (2) the spouse, civil partner, cohabitant, parents, brothers, sisters and children

of each such director; (3) the trustees of every trust (including a discretionary trust) of which any such director or any such member of his or her family is a beneficiary or a potential beneficiary; and (4) every company which is controlled by any one or more of such directors, such members of their families and the trustees of all such trusts;

(vii) an individual; the spouse, civil partner, cohabitant, parents, brothers, sisters and children of such individual; the trustee of every trust (including a discretionary trust) of which such individual or any such member of his or her family is a beneficiary or a potential beneficiary; and every company which is controlled by any one or more of such individual, such members of his or her family and the trustees of all such trusts: all with each other;

(viii) persons who, as part of a single transaction or a linked series of transactions, sell assets (other than quoted securities) to a relevant company in consideration for the issue of new shares in the relevant company to them: with each other.

**RULE 4. DISAPPLICATION OF CERTAIN RULES**

**Rule 3.1 in Part A and Rule 3.2, Rule 5, Rule 7.2, paragraph (b) in Rule 9.1, Rule 14, Rule 15, Rule 36 (to the extent that such Rule relates to partial offers that will not constitute takeover bids), Rule 37, Rules 39 to 41 (inclusive) and Appendix 4 in Part B shall apply only in the case of companies which fall within the definition of “relevant company” in section 2 of the Act (as that section has effect apart from the operation of Regulation 4).**

**RULE 5. STATUS OF APPENDICES**

**Appendices 1 to 4 below are appendices to, and form part of, the Rules contained in Part B.**



## PART B - PRINCIPAL RULES

### PART B - SECTION 1.

#### THE APPROACH, ANNOUNCEMENTS AND INDEPENDENT ADVICE

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**RULE 1. THE APPROACH**

**(a) A person intending to make an offer shall disclose that intention to the offeree board or its advisers before making any announcement concerning the offer. Any such adviser to whom such an intention is disclosed shall notify the offeree board immediately.**

**(b) If an intention to make an offer, or an approach with a view to an offer being made, is disclosed or made to the offeree board or its advisers, whether by the offeror or by another person on its behalf, the person who makes such disclosure or approach shall at the outset disclose to the offeree board or (as the case may be) its advisers the identity of the offeror and, if applicable, of the persons having control of the offeror.**

## **RULE 2. CONFIDENTIAL INFORMATION; THE TIMING AND CONTENTS OF ANNOUNCEMENTS**

### **2.1 CONFIDENTIAL INFORMATION**

(a) Prior to an announcement under Rule 2 concerning an offer, the offeror, the offeree, the respective persons acting in concert with them and their respective advisers shall maintain strict confidentiality in respect of the offer or contemplated offer.

(b) Every person who is privy to confidential information, and particularly price-sensitive information, concerning an offer or contemplated offer shall treat that information as confidential and may pass it to another person only if it is necessary in connection with the offer or contemplated offer to do so, if such disclosure is not in breach of any applicable law and if that person accepts the need for confidentiality under Rule 2.1. All such persons shall conduct themselves so as to minimise the possibility of an accidental leak of information.

### **2.2 WHEN AN ANNOUNCEMENT IS REQUIRED**

An appropriate announcement concerning an offer or a possible offer shall be made if the Panel so directs, and specifically, unless the Panel consents otherwise:

(a) immediately after a firm intention to make an offer has been notified to the offeree board, irrespective of the attitude of that board to the offer;

(b) immediately after a transaction which gives rise, or which subject only to the issue in the State of a governmental or regulatory authorisation, consent, approval or clearance will give rise, to an obligation to make an offer under Rule 9 or Rule 37. The announcement that such an obligation has been, or subject only as above-mentioned will be, incurred shall not be delayed while full information is being obtained; additional information which is not included in such announcement shall be the subject of a later supplementary announcement. Immediately after the issue of any such governmental or regulatory authorisation, consent, approval or clearance, an announcement of that fact shall be made;

(c) when, following an approach by an offeror to the offeree, the offeree is the subject of rumour and speculation or there is an anomalous movement in its share price;

(d) when, before an approach has been made by an offeror to the offeree, the offeree is the subject of rumour and speculation or there is an anomalous movement in its share price, and, in either case, there are reasonable grounds for concluding that the cause of the

rumour, speculation or price movement is the offeror's own actions or intentions;

(e) when negotiations or discussions concerning a possible offer are about to be extended to include more than a very restricted number of people. An offeror which proposes to approach a wider group of people (including, inter alia, where a group is being organised to make or to finance an offer or where irrevocable commitments are to be sought) shall consult the Panel in advance;

(f) when a purchaser is being sought for a holding, or aggregate holdings, of securities conferring 30% or more of the voting rights in a relevant company, or when the board of a relevant company is seeking potential offerors, and:

- (i) the company is the subject of rumour and speculation or there is an anomalous movement in its share price; or
- (ii) the number of potential purchasers or potential offerors approached is about to be increased to include more than a very restricted number of people.

The potential vendor or (as the case may be) the board of the relevant company shall in any case consult the Panel in advance where it is proposed to hold discussions with more than one potential purchaser or offeror; or

(g) when, after an announcement has been made to the effect that offer discussions are taking place or that an approach or offer is contemplated, the discussions are terminated or the offeror decides not to proceed with an offer.

If the offeree is the subject of rumour and speculation or there is an anomalous movement in its share price, the person with responsibility for making an announcement shall consult the Panel immediately if that person considers that the circumstances do not require an immediate announcement.

### 2.3 RESPONSIBILITIES OF OFFERORS AND THE OFFEREE

(a) Unless the Panel directs otherwise, before the offeree board is approached, the responsibility for making an announcement shall lie with the offeror. Accordingly, the offeror shall monitor the market for any anomalous movement in the offeree's share price and for any rumour or speculation concerning the offeree. The offeror shall also be responsible for making an announcement pursuant to Rule 2.7.

(b) Following an approach by an offeror to the offeree board which may or may not lead to an offer, the primary responsibility for making an announcement (including an announcement under Rule 2.2(g)) shall normally rest with the offeree board which shall monitor the market for any anomalous movement in the offeree's

share price and for rumour and speculation. However, following an unequivocal rejection of an approach, the responsibility for making an announcement under Rule 2.2(c) shall revert to the offeror.

(c) An offeror shall not attempt to prevent the offeree board from making an announcement relating to a possible offer, or publicly identifying the potential offeror, at any time that the offeree board deems appropriate.

(d) The responsibility for making an announcement under Rule 2.2(f) shall lie with the potential vendors or (as the case may be) the board of the relevant company.

#### 2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

(a) Save as provided in paragraphs (b) and (d), until a firm intention to make an offer has been announced a brief announcement by the offeree that talks are taking place which may or may not lead to an offer or by an offeror that it is considering making an offer, shall satisfy the requirements of Rule 2 unless there are special circumstances requiring a more detailed announcement.

(b) An announcement by the 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 (and not unequivocally rejected).

(c) Any subsequent announcement by the offeree which refers to the existence of a new potential offeror must identify that potential offeror, except where the announcement is made after an offeror has announced a firm intention to make an offer for the offeree.

(d) Any announcement which commences an offer period and any subsequent announcement which first identifies a potential offeror must:

- (i) specify the date on which any deadline thereby set in accordance with Rule 2.6(a) will expire; and
- (ii) include a summary of the opening position disclosure and dealing disclosure provisions of Rule 8.

#### 2.5 TERMS AND PRE-CONDITIONS IN POSSIBLE OFFER ANNOUNCEMENTS

(a) Until he or she has notified a relevant company of his or her firm intention to make an offer in respect of that company, a person shall not without the consent of the Panel make a public statement (in this Rule 2.5, a “**Rule 2.5(a) statement**”) in relation to the terms on which an offer might be made by that person in respect of that company.

(b) If any Rule 2.5(a) statement is published by an offeror or on its behalf by any of its directors, officers or advisers prior to any such notification having been made by the offeror and, if incorrect, is not immediately withdrawn, the offeror shall be bound by the statement if it subsequently makes an offer in respect of the offeree, unless the Panel consents otherwise or unless the offeror has reserved (in this Rule 2.5, a “**reservation**”) in that statement the right to set aside the statement on terms specified therein if circumstances specified therein occur, those circumstances have occurred and the offeror has exercised that right.

(c) Where an offeror becomes bound by a Rule 2.5(a) statement, then, without prejudice to the generality of the powers of the Panel to enforce this rule, the following provisions shall have effect:

(i) where the statement concerned relates to the value of the consideration to be paid in a possible offer, any offer subsequently made by the offeror in respect of the offeree shall be made for a consideration having the same or a higher value;

(ii) where the statement concerned relates to the price of a possible offer or a particular exchange ratio in the case of a proposed securities exchange offer, any offer subsequently made by the offeror in respect of the offeree shall be made on the same or better terms. Where all or part of the consideration is expressed in the statement in terms of a monetary value, the offer or that element of the offer shall be made at the same or a higher monetary value. Where all or part of the consideration has been expressed in the statement in terms of a securities exchange ratio, the offer or that element of the offer shall be made on the same or an improved securities exchange ratio; and

(iii) where the statement concerned states that the terms of the possible offer “will not be increased” or are “final” or uses a similar expression, the offeror shall not be permitted subsequently to make an offer in respect of the offeree on better terms.

(d) Where a Rule 2.5(a) statement includes a reservation, that reservation shall be clear and unambiguous and shall not be dependent upon the subjective judgements of the directors of the offeror.

(e) The first announcement in which a Rule 2.5(a) statement is made shall contain prominent reference to any reservation contained in the statement and shall set out precise details of the reservation. Each subsequent reference by the offeror to that statement shall be accompanied by a reference to the reservation.

(f) Except with the consent of the Panel, the restrictions and obligations imposed by Rule 2.5(b) to (e):

(i) shall (subject to subparagraph (ii) below) continue to apply until the expiry of the period of three months following the date on which the offeree ceases to be the subject of an offer period; and

(ii) where an offeror has made a statement to which Rule 2.8 applies but the offeree remains thereafter the subject of an offer period, shall continue to apply until the expiry of the period of three months following the date on which that statement was made.

(g) Where an offeror makes a statement to which Rule 2.5(c) (i) or (ii) applies, the offeror must state that it will have the right to reduce the offer consideration by the amount of any dividend (or other distribution) which is paid or becomes payable by the offeree to offeree shareholders, unless, and to the extent that, the statement provides that offeree shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.

(h) Except with the consent of the Panel, where a Rule 2.5(a) statement is made by or on behalf of an offeror, the consequential restrictions imposed on the offeror by Rules 2.5(c) to (g) shall apply equally to any other person acting in concert with the offeror and to any person who is subsequently acting in concert with the offeror or with any such other person.

(i) Except as permitted by the Rules or with the consent of the Panel or where the only pre-condition to the making of the offer is the receipt of irrevocable commitments, a person shall not include in any announcement of a possible offer under Rule 2.4 any pre-condition to the making of the offer.

(j) Every statement made by the offeree in relation to the terms on which an offer might be made should also make clear whether that statement is being made with the agreement or approval of the offeror. Where the statement is made with the agreement or approval of the potential offeror, the statement will be treated as one to which Rule 2.5(a) applies in the same way as if it had been made by the potential offeror itself. Where it is not being made with such agreement or approval, the statement should also include a prominent warning to the effect that there can be no certainty either that an offer will be made or as to the terms on which any offer might be made.

## 2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT

(a) Subject to Rule 2.6(b), by not later than 5.00 pm on the 42nd day following the date of the announcement in which it is first identified, or

by not later than any extended deadline consented to by the Panel in accordance with Rule 2.6(c), a potential offeror must either:

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or
- (ii) announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies,

unless the Panel has consented to an extension of that deadline.

(b) Rule 2.6(a) will not apply, or will cease to apply, to a potential offeror if another offeror has already announced, or subsequently announces prior to the relevant deadline, a firm intention to make an offer for the offeree. In such circumstances, the potential offeror will be required to clarify its intentions in accordance with Rule 2.6(d) below.

(c) The Panel may consent to an extension of a deadline set in accordance with Rule 2.6(a), or any previously extended deadline consented to by the Panel in accordance with this Rule 2.6(c), at the request of the board of the offeree and after taking into account all relevant factors, including:

- (i) the status of negotiations between the offeree and the potential offeror; and
- (ii) the anticipated timetable for their completion.

Where the Panel consents to an extension of a deadline, the offeree must promptly make an announcement setting out the new deadline and commenting on the matters referred to in paragraphs (i) and (ii) above.

(d) When an offeror has announced a firm intention to make an offer and it has been announced that a publicly identified potential offeror might make a competing offer (whether that announcement was made prior to or following the announcement of the first offer), the potential offeror must, by 5.00 pm on the 53rd day following the publication of the first offeror's initial offer document, either:

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or
- (ii) announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies.

(e) When an offeror has announced a firm intention to make an offer and the offeree subsequently refers to the existence of a potential competing offeror which has not been identified, the potential competing offeror so referred to must, by 5.00 pm on the



53<sup>rd</sup> day following the publication of the first offeror's initial offer document, either:

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or
- (ii) confirm to the offeree that it does not intend to make an offer, in which case the offeree must promptly announce that fact and the potential competing offeror will be treated as if it had then made a statement to which Rule 2.8 applies.

## **2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER**

(a) An offeror may announce a firm intention to make an offer only when the offeror and its financial adviser are satisfied, after careful and responsible consideration, that the offeror is able and will continue at all relevant times to be able to implement the offer. Subject thereto, an offeror shall announce without delay its firm intention to make an offer.

(b) When a firm intention to make an offer is announced, the announcement shall contain:

- (i) the terms of the offer;
- (ii) the identity of the offeror and, if applicable, of the ultimate controlling interests in the offeror;
- (iii) details of all relevant securities of the offeree in which the offeror or any person acting in concert with the offeror is interested, in each case specifying the nature of the interests in accordance with the applicable provisions of Rule 8.6(a); and details of all short positions of each such interested person in any class of relevant securities of the offeree in accordance with the applicable provisions of that rule;
- (iv) details, as set out in Rule 2.9(a), of all relevant securities of the offeree in respect of which the offeror or any person acting in concert with it has received an irrevocable commitment or a letter of intent;
- (v) all conditions (including normal conditions relating to acceptances, quotation and increase of capital) to which the offer or the making of it is subject and any preconditions to which, with the Panel's consent, the making of the offer is subject;
- (vi) details of every agreement or arrangement to which the offeror is party and which relates to the circumstances in which the offeror may or may not invoke or seek to invoke a pre-condition or a condition to its offer and to the consequences

of its doing so, including details of any break fees payable as a result;

(vii) if the Panel has given consent to the offeree board to enter into a contract or arrangement of the kind described in Rule 21.2, details of that contract or arrangement;

(viii) details of any arrangement to which Rule 8.7 applies;

(ix) a summary of the opening position disclosure and dealing disclosure provisions of Rule 8;

(x) a responsibility statement as specified in Rule 19.2;

(xi) a statement that the announcement is being made pursuant to Rule 2.7 of the Rules;

(xii) such information as may be required under Rule 4.1(d);

(xiii) details of the matters referred to in Rule 24.2 and, if the offeror has no intention to make any changes in relation to these matters or if it considers that its strategic plans for the offeree will have no repercussions on employment or the location of the offeree's places of business, it must make a statement to that effect;

(xiv) a list of the documents published on a website in accordance with Rule 26.2 and the address of the website on which the documents are published; and

(xv) a statement that the offeror will have the right to reduce the offer consideration by the amount of any dividend (or other distribution) which is paid or becomes payable by the offeree to offeree shareholders, unless, and to the extent that, the announcement provides that offeree shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration;

provided that if, for reasons of secrecy, it would not be considered prudent for an offeror to make enquiries for the purpose of including in such an announcement details of any relevant securities of the offeree in which persons controlling, controlled by or under the same control as one of its advisers are interested or have short positions, the offeror shall obtain the relevant details and report them to the Panel promptly following the announcement. If the Panel considers the interests or short positions concerned to be significant, it may require the offeror to make a further announcement.

Where the offeror is a company, and insofar as it is affected by the offer, the offeror must also state in the announcement the information set out in paragraphs (i), (ii) and (v) of Rule 24.2(a) with regard to itself.

(c) For the purposes of the Rules, an announcement by or on behalf of an offeror or by the Panel that the offeror has become obliged to make an offer pursuant to Rule 9 or Rule 37 shall (where that obligation is not subject to any pre-condition of the kind referred to in Rule 2.2(b)) be deemed to be an announcement by the offeror of a firm intention to make that offer.

(d) Where the offer is for cash or includes an element of cash, the announcement of a firm intention to make an offer shall include confirmation by the offeror's financial adviser or by another appropriate person that resources are available to the offeror sufficient to satisfy full acceptance of the offer. If such confirmation proves to be inaccurate, the Panel may direct the person that gave such confirmation to provide the necessary resources unless the Panel is satisfied that, in giving the confirmation, that person acted responsibly and took all reasonable steps to assure itself that the cash was available and would continue to be available at all relevant times.

## 2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

(a) (i) A person who makes a statement that, or to the effect that, he or she does not intend to make an offer in respect of a relevant company ("**a statement to which Rule 2.8 applies**") shall make the statement as clear and unambiguous as possible.

(ii) Where a person makes a statement that in the opinion of the Panel suggests, or raises the possibility, that he or she will not or may not make an offer in respect of a relevant company, the Panel may, if it considers it to be appropriate in the circumstances to do so (including after communicating with such person where in the opinion of the Panel that would be useful and practicable):

(1) determine that such statement shall be deemed, for all purposes of Rule 2.8, to be a statement to which Rule 2.8 applies made by such person in relation to the relevant company on the date on which the Panel notifies him or her of that determination; or

(2) require such person to make an announcement withdrawing the statement or otherwise clarifying his or her intentions in respect of the relevant company concerned in a manner approved by the Panel.

(b) Except with the consent of the Panel, a statement to which Rule 2.8 applies shall not specify any circumstances as circumstances the occurrence of which would purportedly entitle the person making the statement to set aside the statement.

(c) (i) Where a person makes a statement to which Rule 2.8 applies, then, except in the circumstances specified in subparagraph (ii) or with the consent of the Panel, neither the person who made the statement, nor any other person who acted in concert with him or her at that time, nor any person who is subsequently acting in concert with the person who made the statement or with any such other person (all such persons being collectively referred to in this rule as the **“persons affected”**), may within the period of 6 months from the date of the statement:

- (1) announce an offer or possible offer or make an offer in respect of the relevant company concerned;
- (2) acquire any securities of the relevant company if any of the persons affected would thereby become obliged under Rule 9 to make an offer in respect of the relevant company;
- (3) acquire any securities of the relevant company if the persons affected or any of them hold securities conferring in the aggregate more than 49.95% but not more than 50% of the voting rights in the relevant company;
- (4) acquire any securities of the relevant company, or rights over securities of the relevant company, if, following that acquisition, the securities of the relevant company which the persons affected or any of them would hold and the securities of the relevant company over which the persons affected or any of them would hold rights would in aggregate confer 30% or more of the voting rights in the relevant company;
- (5) make any statement that raises or confirms the possibility that an offer might be made in respect of the relevant company;
- (6) take any steps in connection with a possible offer in respect of the relevant company where knowledge of the possible offer might be extended beyond a very restricted number of people in the offeror and its immediate legal, financial, tax and accounting advisers; or
- (7) 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 relevant company.

(ii) The circumstances referred to in subparagraph (i) in which a person who has made a statement to which Rule 2.8 applies may set aside the statement are as follows (but, in the case of subparagraphs (1), (2) and (3) below, the existence of the circumstances concerned in any instance shall be subject to prior confirmation by the Panel):

(1) where the board of the relevant company concerned agrees to the statement being set aside, provided that, where the statement was made at any time after the announcement by a third party of a firm intention to make an offer in respect of the relevant company, the statement may not be set aside with the agreement of the board of the relevant company unless that offer has been withdrawn or lapsed, save that, if 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 offer has been withdrawn or lapsed, the statement may not in any circumstances be set aside with the agreement of the board of the relevant company;

(2) where an offer is announced by a third party in respect of the relevant company;

(3) where an announcement is made by the relevant company of (A) a proposal for a “whitewash” dispensation from the obligation under Rule 9 to make a general offer in respect of the relevant company or (B) the proposed entry by the relevant company into a reverse takeover transaction;

(4) where, in the opinion of the Panel, a material change of circumstances has occurred that justifies the person who made the statement changing his or her intention; or

(5) where circumstances have occurred that were, in accordance with paragraph (b), specified in the statement as circumstances the occurrence of which would entitle the person who made the statement to set it aside.

(iii) Where the statement to which Rule 2.8 applies is made by a possible offeror which has made a statement to which Rule 2.5(c)(i),(ii) or (iii) applies and which did not reserve the right not to be bound by that statement with the agreement of the board of the offeree, the board of the offeree may not, except with the consent of the Panel, agree to the restrictions in Rule 2.8(c)(i)(7) being set aside for three months following the date on which the statement to which Rule 2.8 applies is made.

## **2.9 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT**

(a) Save as provided in paragraph (c), during an offer period, if any party to the takeover or any person acting in concert with it procures an irrevocable commitment or a letter of intent, the relevant party to the offer must announce by no later than 12 noon on the following business day full details of the nature of the commitment or letter including:

- (i) the number of relevant securities of each class to which the irrevocable commitment or letter of intent relates;
- (ii) the identity of the person from whom the irrevocable commitment or letter of intent has been procured;
- (iii) in respect of an irrevocable commitment, any outstanding conditions to which it is subject and the circumstances (if any) in which it will cease to be binding; and

in the case of an irrevocable commitment or a letter of intent procured prior to the announcement of a firm intention to make an offer, the price (and any other material terms ) of the possible offer in respect of which the commitment or letter has been procured.

(b) Save as provided in paragraph (c), if any party to a takeover or any person acting in concert with it has procured an irrevocable commitment or a letter of intent prior to the commencement of the offer period, it must announce the details referred to in (a) above by no later than 12 noon on the business day following either the commencement of the offer period or (in the case of an offeror) the date of the announcement that first identifies the offeror as such (as appropriate).

(c) No separate announcement will be required under Rule 2.9(a) or (b) where the details referred to in (a) above are included in an announcement of a firm intention to make an offer pursuant to Rule 2.7(b)(iv) which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured. No separate announcement will be required under Rule 2.9(b) where the details referred to in (a) above are included in an announcement of a possible offer which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured.

(d) If a person who has given an irrevocable commitment or a letter of intent either becomes aware that they will not be able to comply with the terms of that commitment or letter or no longer intends to do so, that person must:

- (i) promptly announce an update of the position together with all relevant details; or
- (ii) promptly notify the relevant party to the takeover and the Panel of the up-to-date position. Upon receipt of such a notification, the relevant party to the takeover shall promptly make an appropriate announcement of the information notified to it together with all relevant details.

(e) Where a party to the takeover or any person acting in concert with it has procured a letter of intent prior to the commencement of the offer period, the shareholder or other person concerned shall confirm in writing to the relevant party to the takeover or its adviser that the letter of intent continues to represent the intentions of the shareholder or other person concerned at the time that the relevant details are announced by the party to the takeover or any person acting in concert with it.

## 2.10 OBLIGATION TO DISTRIBUTE ANNOUNCEMENTS

Except with the consent of the Panel:

(a) promptly after the commencement of an offer period (except where an offer period begins with an announcement under Rule 2.7), a copy of the relevant announcement shall be:

(i) sent by the offeree to each of its shareholders and to the Panel; and

(ii) made readily and promptly available by the offeree to the representatives of its employees or, where there are no such representatives, to the employees themselves;

(b) promptly after the publication of an announcement made under Rule 2.7:

(i) the offeree shall send a copy of that announcement to the Panel and to its shareholders and the holders of securities convertible into, rights to subscribe for and options over, shares of the same class as those to which the offer relates;

(ii) the offeree shall inform its shareholders and the holders of securities convertible into, rights to subscribe for and options over, shares of the same class as those to which the offer relates that addresses, electronic addresses and certain other information provided by them for the receipt of communications from the offeree may be provided to an offeror during the offer period (as required under Appendix 1);

(iii) both the offeror and offeree shall make that announcement readily and promptly available to the representatives of their respective employees or, where there are no such representatives, to the employees themselves; and

(c) when, under (a) or (b) above, the offeree makes a copy of an announcement available to employee representatives or employees, it shall at the same time inform them of the right of employee representatives under Rule 25.1(b) to have a separate opinion appended to the offeree board circular.

## 2.11 CONSEQUENCES OF A “FIRM ANNOUNCEMENT”

(a) Except with the consent of the Panel, when there has been an announcement of a firm intention to make an offer, the offeror shall proceed with the offer on the basis set out in that announcement unless:

(i) the making of the offer is subject to the prior satisfaction of a pre-condition and, in accordance with Rule 13.3, the offeror is permitted to invoke the pre-condition; or

(ii) the offeror would be permitted to invoke a condition to the offer in accordance with Rule 13.3 if the offer were made; or

(iii) another offeror has already made a higher offer in respect of the same offeree and the Panel has confirmed that the offeror need not proceed with its offer.

(b) Except in the circumstances provided in Rule 2.7(b)(xv), once it has announced a firm intention to make an offer, an offeror will not be permitted to exercise any right it had previously reserved either to reduce the level of consideration that it might offer or to vary the form and/or mix of the consideration.

## 2.12 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE

(a) When an offer period commences, the offeree shall announce as soon as practicable and, in any event, by no later than 7.15 a.m. on the next following business day, details of all classes of relevant securities issued by the offeree, together with the number of such securities in issue. An offeror or potential named offeror shall also announce the same details relating to its relevant securities as soon as practicable and, in any event, by no later than 7.15 a.m. on the business day next following any announcement identifying it as an offeror or potential offeror, unless it has stated that its offer is or is likely to be solely in cash.

(b) If the information included in any announcement made under paragraph (a) changes during the offer period concerned, the offeree or the offeror, as appropriate, shall make a revised announcement as soon as practicable and, in any event, by no later than 7.15 a.m. on the business day next following such change.

(c) Every announcement referred to in this Rule shall include, where applicable, the International Securities Identification Number for each relevant security of the company making that announcement.



**2.13 ADDRESS FOR SERVICE**

Each of the offeror, its directors, the persons (if any) acting in concert with it and its advisers and each of the offeree, its directors and its advisers shall, as soon as practicable after the commencement of an offer period, or, in the case of an adviser, as soon as practicable after his, her or its appointment as adviser, if later, furnish the Panel in writing with a postal address within the State (which shall be an “address for service” within the meaning of section 24 of the Act) at which notices, directions and other documents may be served on or given to him, her or it and with an email address. The Panel may require any person to furnish it in writing as soon as practicable with such an address for service and email address. For the purposes of the Rules, the furnishing by any person to the Panel under Rule 2.13 of an address for service or an email address shall be irrevocable until a replacement postal or email address, as the case may be, has been furnished in writing to the Panel in accordance with Rule 2.13.

**RULE 3. INDEPENDENT ADVICE; VIEWS OF THE BOARD****3.1 BOARD OF THE OFFEREE**

- (a) (i) The offeree board shall obtain competent independent advice as to whether the financial terms of any offer in respect of the offeree (including any alternative offers) are fair and reasonable and shall send to its shareholders a circular setting out the substance and source of such advice together with the considered views of the offeree board. Any director with a conflict of interest shall be excluded from the formulation and communication of advice to shareholders.
- (ii) A director of the offeree with a conflict of interest shall not make any announcement or statement in respect of the offer or contemplated offer or be quoted in any statement issued by or on behalf of an offeror, unless the full nature of the conflict of interest is disclosed clearly and prominently in the announcement or statement, together with the fact (if such is the case) that the director is acting in concert with the offeror.
- (b) If the offeree board considers it impossible to express a view on the merits of an offer or to give a firm recommendation for acceptance to shareholders, or if there is a divergence of views amongst members of the offeree board or between the offeree board and the independent adviser as to either the merits of an offer or the recommendation to be made, the offeree board shall, in its circular to shareholders, draw this to their attention and set out fully the arguments for acceptance and for rejection, emphasising the important factors.
- (c) If the independent adviser is unable to advise the board of the offeree whether the financial terms of an offer (or any alternative offers) are, or are not, fair and reasonable, this must be made known to offeree shareholders and an explanation given in the offeree board circular. The Panel shall be consulted in advance about the explanation which is to be given.
- (d) If there is a significant area of uncertainty in the most recently published accounts or interim figures of the offeree (including, inter alia, a qualified audit report, a material provision or contingent liability or a material doubt over the real value of a substantial asset, including a subsidiary), the offeree board and the independent adviser shall highlight particularly the factors within the area of uncertainty which they consider important in relation to shareholders' interests and their decision to accept or reject the offer.

**3.2 BOARD OF AN OFFEROR<sup>6</sup>**

- (a) (i) The board of an offeror shall obtain competent independent advice as set out in Rule 3.1 if its directors are faced with a conflict of interest in respect of the offer concerned.

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<sup>6</sup>Rule 3.2 is not applicable to Shared Jurisdiction Companies.

(ii) The board of a relevant company shall obtain competent independent advice as set out in Rule 3.1 if it proposes to enter into a reverse takeover transaction.

(iii) In each such case, the board of the relevant company or (as the case may be) of the offeror shall send to its shareholders a circular setting out the substance and source of such advice.

(b) If the board of an offeror or of a relevant company is required by paragraph (a) to obtain competent independent advice, it shall do so before announcing the offer concerned or any revision of that offer or (as the case may be) the reverse takeover transaction; such advice shall be as to whether or not the making of the offer or the entry into the reverse takeover transaction is in the interests of its shareholders. The board of the offeror or (as the case may be) of the relevant company shall allow its shareholders sufficient time to consider advice given to them prior to any general meeting held to implement the offer or (as the case may be) the reverse takeover transaction. Every document or advertisement issued by the board of the offeror or (as the case may be) of the relevant company in such circumstances shall include a responsibility statement by the directors as set out in Rule 19.2.

### 3.3 DISQUALIFIED ADVISERS

Except with the consent of the Panel, a person shall be deemed not to be an appropriate person to give independent advice under Rule 3:

(a) to the offeree board, if such person controls or is controlled by or is under the same control as the financial or other professional adviser (including a stockbroker) to an offeror; or

(b) to the offeree board, if there is an agreement or understanding between such person and the offeree board that the whole or any part of the remuneration of such person is contingent upon an offer lapsing, or upon a possible or proposed offer not being made; or

(c) to the board of an offeror or of a relevant company as described in Rule 3.2(a)(i) or (ii), if such person controls or is controlled by or is under the same control as the financial or other professional adviser (including a stockbroker) to the board of the offeree or (as the case may be) the other party to the reverse takeover transaction concerned; or

(d) to the offeree board, or to the board of an offeror or of a relevant company as described in Rule 3.2(a)(i) or (ii), if such person has a significant interest in or financial connection with an offeror, the offeree or any other party to the transaction concerned of such a kind as to create a conflict of interest.

**PART B - SECTION 2.****DEALINGS AND RESTRICTIONS ON THE ACQUISITION OF  
SECURITIES AND RIGHTS OVER SECURITIES**

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**RULE 4. RESTRICTIONS ON DEALINGS IN SECURITIES****4.1 PROHIBITED DEALINGS BY PERSONS OTHER THAN THE OFFEROR**

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

(b) Except as contemplated by these Rules, no person who is privy to such information shall make any recommendation during the relevant period to any other person as to dealings of any kind in relevant securities of the offeree.

(c) No person, other than the offeror, who is privy to confidential price-sensitive information concerning an offer or contemplated offer, shall deal in any way during the relevant period in relevant securities of the offeror except where such information is not price-sensitive in relation to such securities.

(d) Arrangements made by an offeror with a person acting in concert with it whereby interests in relevant securities of the offeree are acquired during the relevant period by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by Rule 4. The announcement of a firm intention to make an offer shall include details of any arrangement of the kind referred to in this paragraph, the identities of the parties to such arrangement and all dealings, and acquisitions of interests, in relevant securities resulting therefrom. Arrangements of that kind which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are prohibited. Any person who is in any doubt as to his or her obligations under Rule 4 shall consult the Panel.

(e) The prohibitions in paragraphs (a) and (c) shall not apply to persons who deal in securities of the offeree or offeror during the relevant period in their capacity as trustees of an established employee share scheme under which the trustees are required from time to time to give effect to written instructions by the employees concerned to deal in securities where:

- (i) the trustees have no discretion as to whether or not to deal in the securities or as to the timing of such dealings; and
- (ii) persons in possession of price-sensitive information do not deal in relevant securities under the relevant scheme for their own account.

#### 4.2 RESTRICTION ON DEALINGS BY THE OFFEROR AND CONCERT PARTIES

(a) Subject to paragraph (f), during an offer period neither the offeror nor any person acting in concert with it may sell any interest in relevant securities of the offeree except with the consent of the Panel and following an announcement, made not less than 24 hours previously, that such sales may be made. Following such an announcement, neither the offeror nor any person acting in concert with it may acquire any interest in relevant securities of the offeree during the remainder of the offer period nor may the offer be revised, except in either case with the consent of the Panel.

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

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

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

(d) If, after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, the discussions are terminated or the offeror decides not to proceed with an offer, neither the offeror nor any person privy to such information may deal in relevant securities of the offeree or (where the information is price-sensitive in relation to securities of the offeror) the offeror prior to an announcement of the position.

(e) Directors of and financial advisers to an offeror or the offeree who are interested in relevant securities of that company shall not during the offer period deal in such securities in a manner inconsistent with any advice which they have given to shareholders of that company, or with any advice with which it can reasonably be assumed that they were associated, without the consent of the Panel, which, if it grants such consent, may require them to make an announcement giving advance notice of their intentions together with an appropriate explanation.

(f) The provisions of paragraphs (a) and (c) shall not apply to an exempt fund manager or an exempt principal trader which is connected with the offeror if the sole reason for that connection is that the fund manager or the principal trader is controlled by, controls

or is under the same control as a financial or other professional adviser (including a stockbroker) acting for the offeror in relation to the offer.

#### **4.3 GATHERING OF IRREVOCABLE COMMITMENTS**

(a) Any person who proposes to contact a holder of securities (not being a professional investor) with a view to seeking an irrevocable commitment shall consult the Panel in advance.

(b) If irrevocable commitments are to be sought from any holders of securities of the offeree, the offeror shall ensure that arrangements have been made to provide each such holder so contacted with adequate information as to the details of the proposal and the nature of the commitment sought, and to afford each such holder a realistic opportunity to consider whether or not that commitment should be given and to obtain independent advice if required.

#### **4.4 DEALINGS IN OFFEREE SECURITIES BY CERTAIN PERSONS RELATED TO THE OFFEREE**

During the offer period, except for exempt principal traders and exempt fund managers, no financial adviser or stockbroker (nor any person controlling, controlled by or under the same control as any such adviser or stockbroker) to an offeree (or to any of its holding companies, subsidiaries or fellow subsidiaries, or to any of its or their associated companies or companies of which such companies are associated companies) shall, except with the consent of the Panel:

(a) either for its own account or on behalf of discretionary clients, acquire any interest in relevant securities of the offeree; or

(b) (except for transactions in the ordinary course of business and on normal commercial terms with persons with whom it has an established customer relationship) assist any person by way of loan or otherwise in making any such acquisition or carrying out any such dealing; or

(c) enter into any indemnity or option arrangement or any arrangement, agreement or understanding, formal or informal, of whatever nature, which may be an inducement to a person to deal or refrain from dealing in relevant securities of the offeree.

#### **4.5 RESTRICTION ON THE OFFEREE ACCEPTING AN OFFER IN RESPECT OF TREASURY SHARES**

An offeree shall not accept an offer in respect of treasury shares until after the offer is unconditional as to acceptances.



**4.6 SALE OF ALL OR SUBSTANTIALLY ALL OF THE OFFEREE'S ASSETS**

(a) Where during an offer period an offeree announces that it has agreed terms on which it intends to sell all or substantially all of its assets (excluding cash and cash equivalents) and that it intends to return to shareholders all or substantially all of its cash balances (including the proceeds of any asset sale), a purchaser or potential purchaser of some or all of those assets must not acquire interests in shares in the offeree during the offer period unless the board of the offeree has made a statement quantifying the amount per share that is expected to be paid to shareholders and then only to the extent that the price paid does not exceed the amount stated. If a range is stated, the price paid must not exceed the bottom of the range.

(b) This restriction shall also apply to any person whose relationship with any asset purchaser is such that, if the asset purchaser were an offeror, that person would be treated under the Rules as acting in concert with the asset purchaser.

**RULE 5. RESTRICTIONS ON ACQUISITIONS<sup>7</sup>****5.1 RESTRICTIONS**

(a) Except as permitted by Rule 5.2:

(i) if the voting rights conferred by:

(1) any securities of a relevant company held by a person or any persons acting in concert with that person; and

(2) any securities of that company over which rights are held by that person or any persons acting in concert with that person,

(collectively the **“initial voting rights”** for the purposes of Rule 5) constitute in aggregate less than 30% of the voting rights in the company, neither that person nor any person acting in concert with that person shall acquire any securities (**“additional securities”**) or any rights (**“additional rights”**) over securities of that company if, following that acquisition, the aggregate of the initial voting rights and the voting rights conferred by the additional securities and by the securities the subject of the additional rights would constitute 30% or more of the voting rights of the company;

(ii) if the initial voting rights constitute 30% or more of the voting rights in the relevant company concerned, neither the person concerned nor any person acting in concert with that person shall acquire in any 12 month period any securities (**“additional securities”**) or any rights (**“additional rights”**) if the additional securities and the securities the subject of the additional rights would confer in aggregate more than 0.05% of the voting rights in that company, provided that a single holder of securities (including persons regarded as such according to Rule 5.5) who holds securities which confer more than 50% of the voting rights in a relevant company shall not be restricted by this subparagraph (ii) from acquiring further securities of that company.

(b) Subject to the exceptions specified in Rule 5.2, all acquisitions of voting securities of a relevant company and of rights over voting securities of that company shall be counted in aggregation for the purposes of paragraph (a), including acquisitions of rights over voting securities where such rights do not entitle their holder to exercise or control the exercise of the voting rights conferred by the underlying securities, provided that no voting right shall be counted more than once in any such aggregation.

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<sup>7</sup>Rule 5 is not applicable to Shared Jurisdiction Companies.

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

(d) Unless the Panel consents otherwise, for the purposes of Rule 5.1 all securities that have been allotted (including securities allotted provisionally) but not yet issued and will upon issue confer voting rights shall be deemed to have been issued.

## 5.2 EXCEPTIONS TO RESTRICTIONS

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

(i) at any time from a single holder of securities (including persons regarded as such according to Rule 5.5) if it is the only acquisition of such voting securities or of rights over such securities by such person within any period of 7 days. This exception shall not apply if that person has announced a firm intention to make an offer in respect of the company and such offer has not lapsed; or

(ii) immediately before the person announces a firm intention to make an offer in respect of the company provided that the offer will be publicly recommended for acceptance by, or the acquisition is made with the agreement of, the offeree board and the acquisition is conditional upon the announcement of the offer; or

(iii) after the person has announced a firm intention to make an offer in respect of the company, provided that:

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

(2) that offer or any competing offer<sup>8</sup> has been publicly recommended for acceptance by the offeree board, even if such recommendation is subsequently withdrawn; or

(3) the first closing date of that offer or of any competing offer<sup>9</sup> has passed; or

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

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<sup>8, 9</sup>See Rule 2.1(c) of Part A.

- (iv) if the acquisition is by way of acceptance of an offer made in accordance with the Rules.
- (b) Without prejudice to the application of Rule 9:
- (i) Rule 5.1(a) shall not restrict the acquisition of new voting securities, of securities convertible into new voting securities or of rights to subscribe for new voting securities (other than the purchase of rights arising pursuant to a rights issue) nor the acquisition of new or existing voting securities, or of rights over such securities, under an established executive or employee share option scheme nor the acquisition of existing voting securities by the exercise of an option; provided that the foregoing provisions of this subparagraph (i) shall be without prejudice to the subsequent aggregability, for the purposes of Rule 5, of such securities as securities held by the person who so acquired them; and provided further that the acquisition of new voting securities as a result of the exercise of conversion or subscription rights or options shall be treated for the purposes of Rule 5.2(a)(i) as if it were an acquisition from a single holder of securities, and the effective date of such an acquisition shall be deemed to be the date of exercise of the conversion or subscription rights or the options;
  - (ii) the restrictions imposed by Rule 5.1 shall not apply to the receipt of bona fide gifts or inheritances. If a person receives a gift or an inheritance of securities as a result of which the voting securities of a relevant company held by that person and the voting securities of the company over which that person holds rights, when aggregated with any voting securities of the company held by any persons acting in concert with that person and any voting securities of the company over which any persons acting in concert with that person hold rights, confer 30% or more of the voting rights in the company, that person shall consult the Panel immediately.
- (c) Except with the consent of the Panel, a principal trader shall not be considered to be a single holder of securities for the purposes of Rule 5.2(a)(i).
- (d) Except with the consent of the Panel, an acquisition of voting securities or of rights over such securities by a person from a single holder of securities will only be permitted by Rule 5.2(a)(i) if the acquisition is of voting securities or of rights over such securities which securities or rights are held by the single shareholder concerned at the time that the acquisition is agreed.
- (e) If an offeror revises its offer, the exceptions allowed by Rule 5.2 shall apply on the basis of the time periods applicable to the original offer.

### **5.3 ACQUISITIONS FROM A SINGLE HOLDER OF SECURITIES - CONSEQUENCES**

(a) Subject to paragraphs (b) and (c), a person who makes an acquisition of voting securities of a relevant company or of rights over such securities from a single holder of securities permitted by Rule 5.2(a)(i) may not make any further acquisitions of voting securities of that company or of rights over voting securities of that company, except in the circumstances set out in Rule 5.2(a)(ii), (iii) and (iv). If, following such an acquisition from a single holder of securities, that person makes an offer in respect of the company which subsequently lapses, such restriction shall cease to apply.

(b) A person who is restricted by paragraph (a) from making further acquisitions shall cease to be so restricted if the aggregate percentage of the voting rights in the relevant company concerned conferred by any voting securities held by that person or any persons acting in concert with that person and any voting securities over which rights are held by that person or any persons acting in concert with that person is reduced to below 30% of the voting rights in the company (in which case that person shall become subject to Rule 5.1(a)(i)).

(c) The restriction imposed by paragraph (a) shall not prevent a person from receiving that person's entitlement to securities through a rights issue or capitalisation issue provided that the aggregate percentage of the voting rights in the company concerned conferred by the voting securities held by that person and the voting securities over which that person holds rights, when aggregated with any voting securities held by any persons acting in concert with that person and any voting securities over which any persons acting in concert with that person hold rights, is not thereby increased; nor shall such restriction prevent a person from acquiring further securities with the consent of the Panel under Rule 9.1.

### **5.4 ACQUISITIONS FROM A SINGLE HOLDER OF SECURITIES - DISCLOSURE**

A person who makes an acquisition of voting securities of a relevant company or of rights over such securities from a single holder of securities permitted by Rule 5.2(a)(i) shall notify that acquisition and that person's consequent total holding of voting securities, rights over voting securities and interests in relevant securities of the company (including securities held by persons acting in concert with that person) to the company, a Regulatory Information Service and the Panel not later than 12.00 noon on the business day following the date of the acquisition. The notification shall distinguish between the acquisition and existing holdings of voting securities and rights over voting securities and shall specify the following: (i) the nature of

any such rights or interests concerned; (ii) the identity of the person dealing and, if different, the owner or controller; and (iii) the number and type of voting securities in each case. Similar details of any short position (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be disclosed. Notification under this Rule 5.4 shall be delivered by electronic mail.

#### **5.5 MEANING OF SINGLE HOLDER OF SECURITIES**

For the purposes of Rule 5.1(a)(ii), two or more persons each of whom holds voting securities of a relevant company shall be regarded as a single holder of securities and, for the purposes of Rule 5.2(a)(i), acquisitions of voting securities of a relevant company, or of rights over such securities, from two or more persons shall be regarded as an acquisition from a single holder of securities if but only if in either case:

(a) one of such persons is a spouse, civil partner, cohabitant, parent, brother, sister or child of the other such person or, as the case may be, of each of the other such persons; or

(b) one of such persons is (1) a subsidiary, (2) the holding company or (3) a subsidiary of a body corporate which is the holding company, of the other such person or, as the case may be, of each of the other such persons.

**RULE 6. ACQUISITIONS RESULTING IN AN OBLIGATION TO OFFER  
A MINIMUM LEVEL OF CONSIDERATION - VOLUNTARY OFFERS****6.1 ACQUISITIONS BEFORE A RULE 2.7 ANNOUNCEMENT**

Without prejudice to the application of Rule 11 and except with the consent of the Panel, if in the case of a voluntary offer the offeror or any person acting in concert with it has acquired securities of the offeree of a class which is the subject of the offer:

- (a) within the period beginning three months prior to the commencement of the offer period and ending at the time of the announcement of the offeror's firm intention to make the offer; or
- (b) within the period beginning 12 months prior to the commencement of the offer period and ending at the time of the announcement of the offeror's firm intention to make the offer, if the Panel is of opinion that, having regard to the General Principles, such period is more appropriate in the circumstances of the case and accordingly so directs,

the value of the consideration per security under the offer to be made by the offeror to the holders of securities of the offeree of that class shall not, at the date of the announcement of its firm intention to make the offer, be less than the highest value of the consideration per security paid for any such acquisition.

**6.2 ESTABLISHING THE MINIMUM LEVEL OF CONSIDERATION**

- (a)
  - (i) Where the consideration under an offer includes securities which are, or as a condition of the offer are to be, quoted on a recognised market and where the value of those securities is relevant for the purposes of Rule 6, the offeror shall consult the Panel which will require to be satisfied that a value acceptable to the Panel is attributed to those securities.
  - (ii) Except with the consent of the Panel, securities offered as consideration under an offer shall not be regarded as having a value for the purpose of satisfying any obligation under Rule 6 if the immediate grant of a quotation for those securities on a recognised market is not anticipated under the offer.
- (b) For the purposes of Rule 6, the price at which securities of the offeree are acquired shall be the price at which the bargain between the acquirer (or, where applicable, his or her broker acting in an agency capacity) and the vendor is struck. Stamp duty and broker's commission payable by the acquirer shall not be regarded as part of the acquisition price for the purposes of Rule 6. If the bargain is linked to any other transaction, contract or arrangement, the acquirer shall notify the Panel of that fact and of the relevant details and the

applicable acquisition price to be adopted for the purposes of Rule 6 shall be subject to the approval of the Panel.

(c) When acceptors of an offer are entitled under an offer to receive and retain a dividend which has been announced by the offeree but the “ex dividend” date has not yet occurred:

(i) the offeror, in establishing the minimum value of the consideration for the purposes of Rule 6.1, may deduct from the highest price paid by it (or any person acting in concert with it) during the applicable period under Rule 6.1 the amount of the dividend to which offeree shareholders are entitled; and

(ii) once an offer value has been announced, purchases in the market or otherwise during the “cum dividend” period by the offeror (or any person acting in concert with it) may be made at prices up to the aggregate of the offer value and the amount of the dividend without necessitating any revision of the offer.

(d) When acceptors of an offer are not entitled under the offer to receive and retain a dividend which has been announced by the offeree:

(i) the offeror, in establishing the minimum value of the consideration for the purposes of Rule 6.1, may not deduct from the highest price paid by it (or any person acting in concert with it) during the applicable period under Rule 6.1 the amount of the dividend; and

(ii) once an offer value has been announced, purchases in the market or otherwise during the “cum dividend” period by the offeror (or any person acting in concert with it) may be made at prices up to the offer value without necessitating any revision of the offer.

(e) If, during the applicable period under Rule 6.1, the offeror or any person acting in concert with it has acquired any convertible securities, warrants, options or other subscription rights over new or existing securities (in this paragraph (e) referred to as the “underlying securities”) of a class the subject of the offer and such convertible securities, warrants, options or other subscription rights are converted or exercised (as applicable), such acquisition shall be treated for the purposes of Rule 6.1 as if it were an acquisition of the underlying securities at a price calculated by reference to the acquisition price of such convertible securities, warrants, options or other subscription rights and the consideration (if any) paid on their conversion or exercise. Any person in doubt as to his or her obligations under this paragraph (e) shall consult the Panel.



No obligation under Rule 6.1 will be incurred in respect of the acquisitions of securities convertible into, warrants in respect of, or options or other rights to subscribe for or acquire, new or existing securities before exercise or conversion as applicable. No obligation will be incurred under Rule 6.1 by the offeror or any person acting in concert with it if during the applicable period under Rule 6.1 the offeror or any person acting in concert with it exercises or converts (as applicable) such convertible securities, warrants, options or other subscription rights that were acquired before the commencement of the applicable period under Rule 6.1.

(f) An offeror or any person acting in concert with it who has at any relevant time acquired securities of the offeree of a class the subject of the offer for a consideration other than cash shall be deemed, for the purposes of Rule 6.1, to have acquired those securities at a price per security equal to the value of that consideration at the time of the acquisition, which value shall be established by an independent valuation, a copy of which shall be submitted by the offeror to the Panel in advance of the determination or revision of the offer price.

**RULE 7. CONSEQUENCES OF CERTAIN DEALINGS****7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED**

(a) If, by reason of an offeror or any person acting in concert with it having acquired securities of the offeree, the offeror becomes obliged under Rule 6, 9, 11 or 37 to revise the offer, the offeror shall immediately make an appropriate announcement to that effect. Such announcement shall also state the number of securities acquired and the price paid and shall include the details prescribed by Rule 2.7(b).

(b) An immediate announcement shall also be made by an offeror (whether previously named or not) in the case of an announced possible offer where:

(i) there has been a public indication of the probable amount of its offer price and the offeror or any person acting in concert with it acquires securities of the offeree at a price per security above that amount; or

(ii) an offer in respect of the same offeree has been made or announced under Rule 2.7 by a third party and has not lapsed or been withdrawn and the first mentioned offeror or any person acting in concert with it acquires securities of the offeree at a price above the value of the consideration per security under that offer.

The announcement shall include the number of securities acquired and the price paid.

**7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND CONNECTED PRINCIPAL TRADERS<sup>10</sup>**

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

(ii) Similarly, a discretionary fund manager or a principal trader which is connected with the offeree shall during the offer period or, if earlier, from the time at which the connected party has reason to believe that an offer may be made in respect of the offeree and that it is connected with the offeree,

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<sup>10</sup>Rule 7.2 is not applicable to Shared Jurisdiction Companies.

subject to paragraph (b), be presumed for the purposes of the Act (until the contrary is established to the satisfaction of the Panel) to be acting in concert with the offeree.

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

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

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

**RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS DURING THE OFFER PERIOD; ALSO INDEMNITY AND OTHER ARRANGEMENTS**

**8.1 DEALINGS BY AND POSITIONS OF PARTIES AND PERSONS ACTING IN CONCERT WITH THEM FOR THEMSELVES OR FOR DISCRETIONARY CLIENTS**

- (a) An offeror shall make an opening position disclosure:
- (i) after the announcement that first identifies it as an offeror; and
  - (ii) after the announcement that first identifies a competing securities exchange offeror.
- (b) An offeree shall make an opening position disclosure:
- (i) after the commencement of the offer period; and
  - (ii) if later, after the announcement that first identifies any securities exchange offeror.
- (c) Subject to Rule 8.9 and except as provided in paragraph (e), all dealings in relevant securities by an offeror or the offeree, or by any party acting in concert with either of them, for its own account during an offer period shall be publicly disclosed in accordance with Rules 8.4 to 8.6.
- (d) (i) Subject to Rule 8.9, all dealings in relevant securities by an offeror or the offeree, or by any party acting in concert with either of them, for the account of discretionary investment clients during the offer period (excluding dealings to which subparagraph (ii) applies) shall be publicly disclosed in accordance with Rules 8.4 to 8.6.
- (ii) Subject to Rule 8.9, all dealings in relevant securities for the account of discretionary clients during an offer period by an exempt fund manager connected with the offeror or the offeree shall be privately disclosed in accordance with Rules 8.4 to 8.6 except where Rule 8.3 applies.
- (e) An exempt principal trader connected with an offeror or the offeree shall publicly disclose dealings and positions in relevant securities in accordance with Rules 38.5 and 38.6.

**8.2 DEALINGS BY PARTIES AND BY PERSONS ACTING IN CONCERT WITH THEM FOR NON-DISCRETIONARY CLIENTS**

Subject to Rule 8.9 and except with the consent of the Panel, all dealings in relevant securities during an offer period by an offeror or the offeree, or by any party acting in concert with either of them, for the account of non-discretionary investment clients (other than an

offeror, the offeree and any party acting in concert with either of them) shall be privately disclosed in accordance with Rules 8.4 to 8.6.

### **8.3 DEALINGS BY AND POSITIONS OF PERSONS WITH INTERESTS IN RELEVANT SECURITIES REPRESENTING 1% OR MORE**

(a) Any person who is interested in 1% or more of any class of relevant securities of an offeror or of the offeree shall make an opening position disclosure after the commencement of an offer period and, if later, after the announcement that first identifies the offeror.

(b) Subject to paragraphs (c) to (g) and Rule 8.9, if a person (whether or not acting in concert with the offeree or the offeror) is interested in 1% or more of any class of relevant securities of an offeror or of the offeree, or as a result of a transaction will be interested in 1% or more of any such class, all dealings during an offer period in any relevant securities of the offeree and any offeror by such person (or any other person through whom the interest is derived) shall be publicly disclosed in accordance with Rules 8.4 to 8.6.

(c) A disclosure of a dealing shall not be required under this Rule 8.3 unless the person dealing is interested in 1% or more of any class of relevant securities of an offeror or the offeree at midnight on the day of the dealing or was so interested at midnight on the previous business day.

(d) If two or more persons co-operate on the basis of an agreement, either express or tacit, either oral or written, to acquire for one or more of them an interest in relevant securities, they shall be deemed to be a single person for the purposes of paragraphs (a) and (b).

(e) If a person manages investment accounts on a discretionary basis, he or she, and not the person on whose behalf the relevant securities concerned (or interests in such securities) are managed, shall be deemed for the purposes of paragraphs (a) and (b) to be interested in those relevant securities. Except where the Panel consents otherwise, where more than one discretionary investment management operation is conducted within a group consisting of a company, any companies controlled by it and any companies under the same control as it, the interests in relevant securities of all such operations shall be deemed for the purposes of this Rule as those of a single person and shall be aggregated.

(f) (i) Paragraphs (a) to (e) shall not apply to a recognised intermediary acting in a client-serving capacity, but if such a recognised intermediary:

(1) is, or forms part of, a person acting in concert with the offeree; or

(2) is, or forms part of, a person acting in concert with the offeror and the identity of that offeror has been publicly announced,

the recognised intermediary shall disclose in accordance with Rule 8.1 unless it is, or forms part of, an exempt principal trader connected with an offeror or the offeree, in which case it shall disclose in accordance with Rules 38.5 and 38.6.

(ii) If a recognised intermediary holds or deals in relevant securities other than in a client-serving capacity, it shall disclose all such holdings and dealings in accordance with Rule 8.3(a) to (e), provided that in making such disclosure the relevant intermediary need not aggregate or disclose details of any interests in relevant securities or of short positions which in either case it holds in a client-serving capacity.

(g) A person who, but for this paragraph, would be obliged to disclose a dealing under either Rule 8.1(c) or 8.1(d)(i) and also Rule 8.3 shall cease to be obliged to disclose it under Rule 8.3 if he or she duly discloses it under Rule 8.1(c) or (as applicable) 8.1(d)(i).

#### 8.4 TIMING OF DISCLOSURE

(a) An opening position disclosure shall be made no later than 12 noon, in the case of Rules 8.1(a) and 8.1(b) and Rules 38.6(a) and (b), and 3.30pm in the case of Rule 8.3(a), on the day falling 10 business days after the commencement of the offer period or the announcement that first identifies an offeror, as applicable.

(b) Both public and private dealing disclosures required by Rules 8.1(c) and 8.1(d), Rule 8.2 and Rule 38.5 shall be made no later than 12.00 noon on the business day following the date of the transaction.

(c) Public dealing disclosures required by Rule 8.3 shall be made no later than 3.30 p.m. on the business day following the date of the transaction.

#### 8.5 METHOD OF DISCLOSURE (PUBLIC AND PRIVATE)

(a) Public disclosure under Rules 8.1(a), 8.1(b), 8.1(c) and 8.1(d)(i), Rules 8.3(a) and (b), Rule 38.5 and Rules 38.6(a) and (b) shall be made to a Regulatory Information Service in typed format by electronic delivery and, except with the consent of the Panel, the time at which an announcement shall be deemed to be made shall be the time of publication of such announcement by the Regulatory Information Service concerned.

If parties to an offer or persons acting in concert with them make press announcements regarding dealings in addition to making formal disclosures, they shall ensure that no confusion results.

Public disclosure shall be made by the person who deals or by an agent acting on its behalf. If there is more than one agent (including, inter alia, a financial adviser and a stockbroker), the person who deals and its agents shall take particular care to ensure that the responsibility for disclosure is agreed between them and that it is neither overlooked nor duplicated.

(b) Private disclosure under Rules 8.1(d)(ii) and 8.2 shall be made to the Panel only. Dealings shall be disclosed by electronic mail.

#### **8.6 DETAILS TO BE INCLUDED IN DISCLOSURES (PUBLIC AND PRIVATE)**

(a) An opening position disclosure under Rules 8.1(a), 8.1(b) or 8.3(a) and Rules 38.6(a) and (b) shall follow the format of the specimen disclosure forms (Form 8.1(a) & (b), Form 8.3 or Form 38.5(b) & 38.6, as appropriate) as set out in Appendix 3 and shall, subject to Rule 8.9, include the following information:

- (1) the identity of the person disclosing and, if different, the person owning or controlling the interest;
- (2) details of all relevant securities of the offeree or any offeror in which the person disclosing has an interest, in each case specifying the nature of the interests concerned. Similar details of all short positions (whether conditional or absolute and whether in the money or otherwise) of the person so disclosing in any class of relevant securities of the offeree or an offeror, as the case may be, including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, shall also be disclosed;
- (3) the percentage or percentages of the class or classes of relevant securities concerned which each of the interests disclosed pursuant to subparagraph (2) above represents;
- (4) if relevant, details in accordance with Rule 8.7 of any arrangements to which that Rule applies; and
- (5) where the disclosure is being made by an offeror or the offeree, the details in (2) and (3) above shall include the interests, short positions and Rule 8.7 arrangements of any party acting in concert with either of them and an explanation of how that status arises (stating all the reasons, if there are more than one).

- (b) (i) A public dealing disclosure under Rules 8.1(c) and 8.1(d)(i) shall follow the format of the specimen disclosure form (Form 8.1(c) & (d)(i)) as set out in Appendix 3 and a public disclosure under Rule 8.3 shall follow the format of the specimen disclosure form (Form 8.3) as set out in Appendix 3.
- (ii) A public disclosure of dealings shall, subject to Rule 8.9, include the following information:
- (1) the total of the relevant securities concerned of any offeror or of the offeree in which the dealing took place;
  - (2) the prices paid or received (in the case of an average price bargain, each underlying trade shall be disclosed);
  - (3) the identity of the person dealing and, if different, the person owning or controlling the interest;
  - (4) if the dealing is by a person acting in concert, an explanation of how that status arises (stating all of the reasons, if there are more than one);
  - (5) details of all relevant securities of the offeree or any offeror, as the case may be, in which the person disclosing has an interest, in each case specifying the nature of the interests concerned. Similar details of all short positions (whether conditional or absolute and whether in the money or otherwise) of the person so disclosing in any class of relevant securities of the offeree or an offeror, as the case may be, including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, shall also be disclosed;
  - (6) the percentage or percentages of the class or classes of relevant securities concerned which each of the interests disclosed pursuant to subparagraph (5) above represents;
  - (7) if relevant, details in accordance with Rule 8.7 of any arrangements to which that Rule applies; and
  - (8) if the disclosure is made under Rule 8.3, a statement to that effect.



- (c) For the purposes of Rule 8.6:
- (i) in determining whether an obligation arises to make an opening position disclosure under Rule 8.3(a), the interests and short positions required to be assessed are those existing or outstanding at the time of the announcement that commences the offer period or the time of the announcement that first identifies the offeror, as the case may be;
  - (ii) in respect of an opening position disclosure, the interests and short positions required to be disclosed are those existing or outstanding at midnight on the date immediately preceding the date on which the disclosure is made;
  - (iii) in respect of a dealing disclosure, the interests and short positions required to be disclosed are those existing or outstanding at midnight on the date of the dealing concerned;
  - (iv) in respect of an opening position disclosure or a dealing disclosure, percentages shall be calculated by reference to the numbers of relevant securities disclosed by the offeree concerned or (where applicable) by the offeror concerned, as appropriate, in its latest announcement pursuant to Rule 2.12;
  - (v) in respect of an opening position disclosure or a dealing disclosure, the disclosure shall include confirmation whether the person making the disclosure is on the same day disclosing, or has previously disclosed, details in respect of the relevant securities of any other party or parties to the offer under Rule 8;
  - (vi) in respect of a dealing disclosure, where an offeror or any person acting in concert with it acquires any interest in relevant securities of the offeree on a specially cum or specially ex dividend basis, details of that fact shall also be disclosed;
  - (vii) in respect of an opening position disclosure or a dealing disclosure, and in the case of agreements to purchase or sell, options or derivatives, full details shall be given so that the nature of the interest, position or dealing can be fully understood. For options, this shall include a description of the options concerned, the number of securities under option, the exercise period (or, in the case of exercise, the exercise date), the exercise price and any money paid or received. For derivatives, this shall include, at least, a description of the derivatives concerned, the number of reference securities to which they relate (when relevant), the maturity date (or, if applicable, the closing out date) and the reference price (and any fee payable on entering into the derivative);

- (viii) in respect of an opening position disclosure or a dealing disclosure, if there exists any agreement, arrangement or understanding, formal or informal, between the person dealing and any other person relating to the voting rights conferred by any relevant securities under option or relating to the voting rights conferred by, or future acquisition or disposal of, any relevant securities to which a derivative is referenced, as the case may be, full details of such agreement, arrangement or understanding, identifying the relevant securities concerned, shall be included in the disclosure. If there is no such agreement, arrangement or understanding, that fact shall be stated. Where such an agreement, arrangement or understanding is entered into at a later date than the derivative or option to which it relates, it shall be deemed to be a dealing in relevant securities;
  - (ix) in respect of a dealing disclosure, a futures contract or covered warrant for which exercise includes the possibility of delivery of the underlying securities shall be treated as an option. A futures contract or covered warrant that does not include the possibility of delivery of the underlying securities shall be treated as a derivative;
  - (x) if, following a public disclosure made under Rule 8, interests in relevant securities are transferred into or out of a person's management in a manner that does not constitute a dealing, a reference to the transfer shall be included in the next public disclosure made by that person under Rule 8; and
  - (xi) a disclosure by an exempt fund manager or an exempt principal trader shall specify the name of the offeror or the offeree with which it is connected and the nature of the connection.
- (d) Where a party that is required to make, but has not yet made, an opening position disclosure deals in any relevant securities of the offeree or of the offeror before the relevant deadline under Rule 8.4(a), in the case of:
- (1) an offeree or an offeror, it shall make a dealing disclosure in accordance with Rule 8.1(c) no later than 12.00 noon on the business day following the date of the transaction, and an opening position disclosure by the relevant deadline under Rule 8.4(a), in respect of the interests and short positions of itself and any parties acting in concert with it;
  - (2) a person with an interest in relevant securities representing 1% or more, they will not be required to make an opening position disclosure but shall make a dealing disclosure under Rule 8.3(b); and

- (3) an exempt principal trader, they will not be required to make an opening position disclosure but shall make a dealing disclosure under Rule 38.5.
- (e) (i) Private disclosure under Rule 8.1(d)(ii) by exempt fund managers connected with an offeror or the offeree shall follow the format of the specimen disclosure form (Form 8.1(d)(ii)), as set out in Appendix 3.
- (ii) A private disclosure under Rule 8.2 shall include the identity of the person dealing, the total of relevant securities in which the dealing took place and the prices paid or received (in the case of an average price bargain, each underlying trade shall be disclosed). Disclosures under Rule 8.2 shall follow the format of the specimen disclosure form (Form 8.2), as set out in Appendix 3. In the case of dealings in options or derivatives, the same information as specified in paragraph (b) shall be required.

#### 8.7 INDEMNITY AND OTHER ARRANGEMENTS

(a) In these Rules, the expression “**arrangement to which Rule 8.7 applies**” means any indemnity or option arrangement, and any agreement or understanding, formal or informal, of whatever nature between two or more persons, relating to relevant securities which is or may be an inducement to one or more of such persons to deal or refrain from dealing in such securities.

(b) Without prejudice to the application of Rule 4.4(c) and subject to Rule 8.7(c), if an arrangement to which Rule 8.7 applies exists with any offeror, with the offeree or with any person acting in concert with any offeror or with the offeree in relation to relevant securities, the offeror, the offeree or (as the case may be) the person so acting in concert shall disclose publicly, in accordance with Rules 8.4 to 8.6, the details of such arrangement and the parties thereto as if it were a dealing in relevant securities, whether or not any dealing takes place.

(c) Where an offeree has entered into an arrangement to which Rule 8.7 applies before the commencement of the offer period or an offeror has entered into such an arrangement before the announcement that first identifies it as an offeror, details of such arrangement must be disclosed in the announcement that commences the offer period or the announcement that first identifies the offeror (as the case may be).

#### 8.8 RESPONSIBILITIES OF STOCKBROKERS, BANKS AND OTHER INTERMEDIARIES

Stockbrokers, banks and others who deal in relevant securities on behalf of clients during an offer period shall ensure, so far as is

practicable, that those clients are aware of the disclosure obligations attaching to persons acting in concert and other persons under Rule 8 and that those clients are willing to comply with them; and principal traders and dealers who deal directly with investors during an offer period shall, where appropriate, likewise draw the attention of such investors to the relevant Rules; provided however that this obligation shall not apply to an intermediary in the case of any client where the total value of the dealings (excluding stamp duty and commission) in any relevant security undertaken by that intermediary for that client (including persons known to be acting in concert with the client) during any period of 7 days is less than €70,000. This dispensation shall not affect the obligation of principals, of persons acting in concert with them or of other persons themselves to initiate disclosure of their own dealings, whatever total value is involved.

#### **8.9 POSITIONS AND DEALINGS NOT REQUIRED TO BE DISCLOSED**

Where an offeror has announced that an offer or possible offer is, or is likely to be, wholly in cash, Rules 8.1, 8.2 and 8.3 shall not require the disclosure of positions or dealings in relevant securities of the offeror.

**PART B - SECTION 3.****THE MANDATORY OFFER**

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**RULE 9. THE MANDATORY OFFER AND ITS TERMS****9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS RESPONSIBLE FOR MAKING IT**

Except with the consent of the Panel, if:

(a) any person, or any persons acting in concert, acquire control of a relevant company (otherwise than in the circumstances referred to in Rule 37(a)(i)); or

(b) any person, or any persons acting in concert, who control a relevant company acquire within any period of 12 months additional securities of such an amount as will increase by more than 0.05% the aggregate percentage of the voting rights in that company conferred by the securities held by him, her or them,<sup>11</sup>

such person or, in the case of persons acting in concert, such one or more of those persons as the Panel shall direct shall extend an offer, in accordance with the requirements of Rules 9.2, 9.3 and 9.4, to the holders of each class of equity share capital of the relevant company, whether or not such class confers voting rights, and also to the holders of each other class of transferable voting securities of the company, provided that a single holder of securities (including persons regarded as such for the purposes of Rule 5.1(a)(ii)) who holds securities which confer more than 50% of the voting rights in a relevant company may acquire additional securities of that company without incurring an obligation under Rule 9.1. The person who is, or in the case of persons acting in concert the persons who are or may become, obliged to make an offer under Rule 9 shall consult the Panel in all cases in which offers are to be made for more than one class of share capital of the offeree. Offers made by the offeror for different classes of share capital of the offeree shall be comparable.

An offer shall not be required under this Rule where control of a relevant company is acquired as a result of a voluntary offer made in accordance with the Rules (including, where applicable, Rules 14 and 15) to all the holders of equity share capital conferring voting rights and other transferable voting securities of that company in respect of their entire holdings.

**9.2 RESOURCES, CONDITIONS AND CONSENTS**

(a) No acquisition of securities which would give rise to an obligation to make an offer under Rule 9 shall be made by any person unless such person and his or her financial advisers are satisfied that such person is able and will continue at all relevant times to be able to implement the offer.

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<sup>11</sup> Paragraph (b) in Rule 9.1 is not applicable to Shared Jurisdiction Companies.

- (b) Except with the consent of the Panel:
- (i) an offer made under Rule 9 shall, subject to Rule 12, be conditional only upon the offeror having received acceptances in respect of shares which, together with securities acquired or agreed to be acquired before or during the offer period, will result in the offeror and any persons acting in concert with it holding in the aggregate securities conferring more than 50% of the voting rights in the offeree; and
  - (ii) no acquisition of securities which would give rise to an obligation to make an offer under Rule 9 may be made by any person if the making or implementation of such offer would or might be dependent upon the passing of a resolution at any meeting of shareholders of the offeror or upon any other condition, consent or arrangement (other than the acceptance condition and the condition required by Rule 12(a)(i)(1)).
- (c) If an offer under Rule 9 lapses because a purchase of securities of the offeree may not be counted by reason of Rule 10.4 and subsequently the purchase is completed, the offeror shall consult the Panel. In such circumstances the Panel may direct the offeror to make a new offer in respect of the offeree, to reduce its holding of securities of the offeree or to take such other action as the Panel may consider appropriate.

### 9.3 THE COMPETITION ACT AND THE EUROPEAN COMMISSION

- (a) Where applicable, every offer under Rule 9 shall be made subject to the conditions required by Rule 12(a) and (b).
- (b) If an offer under Rule 9 is made subject to the condition specified in Rule 12(a)(i)(1) and the offer lapses as a result of that condition not being satisfied, the Panel may direct the offeror and any persons acting in concert with it or any of them to reduce their holdings of securities of the offeree so that the aggregate percentage of the voting rights in the offeree conferred by their holdings is reduced to below 30%, or to its original percentage level before the obligation to make an offer was incurred if that was 30% or more.
- (c) If an offer under Rule 9 lapses pursuant to Rule 12(b), the obligation under Rule 9.1 to make an offer shall nonetheless continue and, accordingly, if thereafter the proposed transaction is allowed by the European Commission or (as the case may be) the competent authority of a Member State to which the European Commission referred the proposed transaction, the offeror shall make a new offer in respect of the same offeree on the same terms and at not less than the same price as soon as practicable. If the proposed transaction is prohibited by the European Commission or such competent authority and the offer therefore cannot be made, the Panel may, if there is no

decision to such effect by the European Commission or such competent authority, direct the offeror and any persons acting in concert with it or any of them to reduce their holdings of securities of the offeree so that the aggregate percentage of the voting rights in the offeree conferred by their holdings is reduced to below 30%, or to its original percentage level before the obligation to make an offer was incurred if that was 30% or more. Whilst the Panel may require an offeror whose offer has lapsed pursuant to Rule 12(b) to proceed with all due diligence before the European Commission or (as the case may be) a competent authority of a Member State, if, with the consent of the Panel, the offeror and any persons acting in concert with it sell to unconnected parties within a limited period sufficient securities of the offeree to reduce the aggregate percentage of the voting rights in the offeree conferred by their holdings to below 30%, or to its original percentage level before the obligation under Rule 9.1 to make an offer was incurred if that was 30% or more, that obligation shall cease and the relevant offer period shall end.

(d) While the European Commission or (as the case may be) a competent authority of a Member State is considering the case following such an initiation of proceedings or referral as is referred to in Rule 12(b), neither the offeror nor any person acting in concert with it may acquire any further securities of the offeree without the consent of the Panel.

#### 9.4 CONSIDERATION TO BE OFFERED

(a) Except with the consent of the Panel and subject as otherwise provided by this Rule 9.4, an offer made under Rule 9 shall in respect of each class of shares the subject of the offer be in cash, or be accompanied by a cash alternative offer, at a price per share which shall not be less than the highest value of the consideration per share paid by the offeror or any person acting in concert with it for shares of the offeree of that class during the period (in Rule 9.4 referred to as the “**relevant period**”) beginning 12 months prior to the announcement by the offeror of a firm intention to make that offer and ending on the date on which the offer closes for acceptance. Accordingly, if after the time of the announcement of the offeror’s firm intention to make the offer but before the offer closes for acceptance, the offeror or any person acting in concert with it acquires shares in the offeree of a class the subject of the offer at a price per share higher than the offer price, the offeror shall increase the offer price in respect of that class of shares to not less than the highest price per share paid for any of the shares so acquired. Immediately after any such acquisition, the offeror shall announce that a revised offer will be made in accordance with Rule 9.4. Such announcement shall also state the number of shares so acquired and the price paid for them and shall include the details prescribed by Rule 2.7(b). After an offer made under Rule 9 has become unconditional as to acceptances, the cash offer or (as the case may be) the cash alternative offer shall remain open for not less than 14 days after the date on which it would otherwise have expired. The offeror shall consult the Panel if it is making offers in respect of more than one class of shares of the offeree.



(b) Subject as otherwise provided by Rule 9.4, if during the relevant period the offeror or any person acting in concert with it acquires shares in the offeree of a class the subject of the offer for a consideration other than cash, such acquisition shall be deemed for the purposes of paragraph (a) to be an acquisition of the shares concerned at a price equal to the value of that consideration at the time of the acquisition. The value of any such consideration shall be established by an independent valuation, a copy of which shall be submitted by the offeror to the Panel in advance of the determination or revision of the offer price.

(c) If in the case of an offer under Rule 9 the offeror or any person acting in concert with it makes during the relevant period an acquisition of shares in the offeree of a class the subject of the offer in exchange for securities, the Panel may require the offeror, in addition to making a cash offer, to offer such securities to all shareholders of the offeree on such terms as the Panel shall determine to be appropriate. The offeror shall consult the Panel in any case in which it or any person acting in concert with it acquires during the relevant period any shares in the offeree of a class the subject of the offer in exchange for securities.

(d) (i) For the purposes of paragraph (a), the price at which shares in the offeree are acquired by the offeror or any person acting in concert with it shall be the price at which the bargain between the acquirer (or, where applicable, his or her broker acting in an agency capacity) and the vendor (or principal trader) is struck. Stamp duty and broker's commission payable by the acquirer shall not be regarded as part of the acquisition price for the purposes of paragraph (a). If the bargain is linked to any other transaction, contract or arrangement, the acquirer shall notify the Panel of that fact and of the relevant details and the Panel will determine the applicable acquisition price for the purposes of paragraph (a).

(ii) If during the relevant period the offeror or any person acting in concert with it acquires shares in the offeree (in this subparagraph (ii) referred to as the "underlying shares") of a class the subject of the offer by the conversion or exercise (as applicable) of convertible securities, warrants, options or other subscription rights over new or existing shares, for the purposes of paragraph (a) the price paid for the underlying shares shall (where the counterparty is the offeree) be established by reference to the market price of the shares so acquired at the close of business on the day on which the relevant conversion or exercise notice was submitted to the offeree and otherwise shall be the consideration (if any) paid to the counterparty on their conversion or exercise, provided however that if the convertible securities, warrants, options or

subscription rights were themselves acquired during the relevant period, such acquisition shall be treated for the purposes of paragraph (a) as if it were an acquisition of the underlying shares at a price calculated by reference to the acquisition price of such convertible securities, warrants, options or subscription rights and the consideration (if any) paid on their conversion or exercise.

In the circumstances described in subparagraph (ii) above, the offeror shall consult the Panel in advance of the determination or revision of the offer price.

(e) Rule 6.2 (c) and (d) shall apply for the purposes of Rule 9.4(a) as if the references in that Rule to an offer were a reference to an offer under Rule 9.

(f) In certain circumstances, the Panel may, having regard to the General Principles, determine that the highest price calculated under paragraph (a) shall be adjusted. Circumstances which the Panel may take into account when considering such an adjustment are:

- (i) the size and timing of the relevant purchases;
- (ii) the attitude of the offeree board;
- (iii) where securities had been purchased from directors or other persons closely connected with the offeror or the offeree, the price at which such securities were purchased;
- (iv) the number of securities purchased in the preceding 12 months, and the pattern of such purchases, by number of securities and prices paid, over that period;
- (v) if an offer is required in order to enable a company in serious financial difficulty to be rescued;
- (vi) if an offer is required as a result of a person acquiring securities by way of bona fide gift or inheritance; and
- (vii) if the market prices of the securities have been manipulated or affected by exceptional occurrences.

In any case in which the highest price is adjusted under this Rule, the Panel will publish its decision.

(g) The consent of the Panel under paragraph (a) to an offer consideration which does not consist of cash or include a cash alternative will not be granted where:

- (i) the consideration does not consist of liquid securities admitted to trading on a recognised market; or
- (ii) the offeror or persons acting in concert with the offeror have purchased for cash during the relevant period securities carrying 5% or more of the voting rights in the offeree.

### 9.5 OBLIGATIONS OF DIRECTORS DISPOSING OF SECURITIES

If any director of a relevant company proposes to dispose or procure the disposal of securities of that company owned or controlled by that director (or their spouse, civil partner, cohabitant, parents, brothers, sisters and children or a trust of which such director or any such member of their family is a beneficiary or potential beneficiary) to a person (in this Rule 9.5 referred to as the “acquirer”) and he or she knows that as a result of such disposal the acquirer will or may be required to make an offer under Rule 9 in respect of that company, such director shall ensure that as a condition of the disposal the acquirer undertakes to fulfil his or her obligations under that Rule; and except with the consent of the Panel, such director may not resign from the board of the offeree until the first closing date of the offer or, if later, the date on which the offer becomes unconditional in all respects or lapses.

### 9.6 RESTRICTIONS ON EXERCISE OF CONTROL BY AN OFFEROR

Except with the consent of the Panel, if an obligation to make an offer in respect of a relevant company arises under Rule 9, neither any person who is, or being one of a number of parties acting in concert who is or may become, obliged to make such offer nor any person acting in concert with any such person may exercise the voting rights conferred by any securities held in that company, until the offer document has been sent.

### 9.7 TRIGGERING RULE 9 DURING AN OFFER PERIOD

The offeror in a voluntary offer shall consult the Panel in advance if it proposes during the offer period to incur an obligation to make an offer under Rule 9 in respect of the same offeree. If the offeror incurs such an obligation, it shall immediately announce its obligation to make an offer under Rule 9. Neither an offeror in a voluntary offer nor any person acting in concert with it shall make an acquisition of securities which gives rise to an obligation to make an offer under Rule 9 unless the offer can remain open for acceptance for a further 14 days following the date on which the amended offer document is to be sent. If no change in the consideration is involved, it shall be sufficient for the offeror, following its announcement of the offer under Rule 9, to send a notification to the shareholders of the offeree of the revised total holding of relevant securities in the offeree held by the offeror and persons acting in concert with it, of the fact that, subject to Rules 9.2 and 12, the acceptance condition (in the form required by Rule 9.2) is the only remaining condition of the offer, and of the period for which the offer will remain open following the sending of the notification.

**PART B - SECTION 4.****OFFER TERMS - GENERAL**

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## **RULE 10. THE ACCEPTANCE CONDITION**

### **10.1 FORM OF THE ACCEPTANCE CONDITION - VOLUNTARY OFFERS**

Except with the consent of the Panel, it shall be a condition of any voluntary offer for equity share capital conferring voting rights or for other transferable voting securities which, if accepted in full, could result in the offeror holding securities conferring more than 50% of the voting rights in the offeree that the offer shall not become unconditional as to acceptances unless the offeror has acquired or agreed to acquire (either pursuant to the offer or otherwise) securities conferring more than 50% of the voting rights in the offeree.

For the purposes of the acceptance condition, the offeror shall take account of all shares conferring voting rights (or which, in the case of shares allotted but not yet issued, will upon issue confer voting rights) that are unconditionally allotted or issued before the offer becomes unconditional as to acceptances, whether pursuant to the exercise of conversion or subscription rights or otherwise. If in any case (including, inter alia, as a result of a rights issue) shares have been allotted in renounceable form (including shares allotted provisionally), the offeree shall consult the Panel promptly.

### **10.2 INFORMATION TO OFFEROR AND EXTENSION OF OFFER TO NEW SHARES**

Following the announcement of a firm intention to make an offer, the offeree shall, on request, provide the offeror as soon as possible with all material details of the issued shares in the offeree (including a copy of the register of members), of the other securities of the offeree in issue and, to the extent not issued, of the allotted shares in the offeree, and all material details of any conversion or subscription rights or any other rights pursuant to the exercise of which shares in the offeree may be allotted or issued during the offer period. In the case of conditionally allotted shares, the details shall include the conditions concerned and the dates on which such conditions may be satisfied. In the case of any conversion, subscription or other rights as described above, the details shall include the number of shares which may be unconditionally allotted or issued during the offer period as a result of the exercise of such rights (identifying separately those shares attributable to rights the exercise periods of which commence or expire on different dates) and the prices at which those rights may be exercised.

The offeree shall immediately notify the offeror of any allotment or issue by it of shares and of the exercise of any such rights made or effected during the offer period and shall provide the offeror as soon as possible with all material details.

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The offeror shall make appropriate arrangements to ensure that any person to whom shares of a class the subject of the offer are unconditionally allotted or issued during the offer period will have an opportunity of accepting the offer in respect of such shares. If the offeror has any doubt as to its obligations under Rule 10.2, it shall consult the Panel.

### 10.3 ACCEPTANCES

(a) Without prejudice to Rule 10.5, an acceptance of an offer shall not be counted towards fulfilling an acceptance condition of that offer unless: (i) if it is to be accepted by means of an acceptance form, an acceptance form is received that complies with the requirements of paragraph (b); and (ii) if it is to be accepted without an acceptance form, an electronic message is received that complies with the requirements of paragraph (c), by the offeror's receiving agent on or before the last time for acceptance set out in the offeror's relevant document or announcement and the offeror's receiving agent has recorded that the acceptance form (and any relevant documents required by paragraph (b)) or electronic message has been so received.

(b) For the purposes of paragraph (a), the requirements for an acceptance form are that it is completed to a suitable standard (as specified in paragraph (d)) and is:

(i) accompanied by share certificates in respect of the relevant shares, where the shares are held in certificated form, or such other documents, identification numbers or codes (if any) as are specified in the offer document in order to establish the right of the acceptor as or to become the registered holder of the relevant shares; and, if an acceptance is accompanied by share certificates or such other documents, identification numbers or codes in respect of some but not all of the relevant shares, then, subject to the other requirements of this subparagraph (i) being satisfied in respect of the shares which are covered by share certificates or such other documents, identification numbers or codes, the acceptance may be treated as satisfying the requirements of this subparagraph (i) insofar as it relates to the shares so covered; or

(ii) in the case of a holding in a book entry transfer facility (other than the Euroclear System), covered by a transfer to the receiving agent's account at the book entry transfer facility, details of which shall be provided on the acceptance form, or a blocking of the relevant holding to the instruction of the receiving agent; if the acceptance is covered by a transfer in respect of some but not all of the relevant holding, it may be treated as fulfilling the requirement of this subparagraph (ii) in respect of that part of the holding transferred; or

(iii) from a registered holder or his or her personal representatives (but only up to the amount of the registered holding as at the final time for acceptance and only to the extent that the acceptance relates to shares which are not taken into account under another subparagraph of this paragraph (b)); or

(iv) certified by the offeree's registrar.

(c) For the purposes of paragraph (a), the requirements for an electronic message are that:

(i) in the case of a holding in the Euroclear System, the offeror's receiving agent has received an electronic message from the operator of the Euroclear System (or its nominee) the effect of which is to confirm that the acceptance is covered by an electronic acceptance instruction, meeting the requirements of the Euroclear System, from the participant in the Euroclear System that is tendering the shares confirming that such participant accepts, and agrees to be bound by the terms of, the offer; and

(ii) in the case of a holding in any other book entry transfer facility, the offeror's receiving agent has received an electronic message from the operator of the facility (or its nominee) as part of a book-entry transfer confirmation that states that the facility has received an acknowledgement, meeting the requirements of the relevant facility, from the participant in the facility that is tendering the shares that such participant accepts, and agrees to be bound by the terms of, the offer.

(d) For the purposes of paragraph (b), an acceptance form shall be regarded as completed to a suitable standard:

(i) where the form constitutes a transfer, if it meets the criteria (other than being duly stamped) for the registration of transfers set out in the Stock Transfer Act 1963 and the offeree's constitution; or

(ii) where the form does not constitute a transfer, if it constitutes a valid and irrevocable appointment of the offeror or some person on its behalf as an agent or attorney for the purpose of executing a transfer of the shares the subject of the acceptance on behalf of the acceptor and, where the form constitutes a letter of transmittal, otherwise meets generally applicable practice and such other requirements as may have been specified by the offeror in the terms of the offer; and

(iii) if the acceptance form is executed by a person other than the registered holder, where appropriate evidence of authority (including, inter alia, grant of probate, court order or certified copy of a power of attorney) has been produced.

#### 10.4 PURCHASES AND OTHER ACQUISITIONS

(a) A purchase or other acquisition of shares otherwise than pursuant to the offer (whether before or during the relative offer period) by an offeror or its nominee (or, in the case of an offer under Rule 9 or Rule 37, a person acting in concert with the offeror, or that person's nominee) may be counted towards satisfying an acceptance condition of the offer only if:

(i) the shares are registered in the offeree's register of members in the name of the offeror or its nominee (or, in the case of an offer under Rule 9 or Rule 37, a person acting in concert with the offeror, or that person's nominee); or

(ii) a transfer of the shares in favour of the offeror or its nominee (or, in the case of an offer under Rule 9 or Rule 37, a person acting in concert with the offeror, or that person's nominee) executed by or on behalf of the registered holder and otherwise completed to a suitable standard (as specified in Rule 10.3(d)) and accompanied by the relevant share certificates or certified by the offeree's registrar is delivered by or on behalf of the offeror to the offeror's receiving agent on or before the last time for acceptance set out in the offeror's relevant document or announcement and the offeror's receiving agent has recorded that the transfer and accompanying documents have been so received.

(b) A person who has agreed to sell shares to the offeror or a person acting in concert with it is not, by virtue only of such agreement, a "nominee" for the purposes of Rule 10.4.

(c) Shares which have been borrowed by the offeror may not be counted towards fulfilling an acceptance condition.

(d) The offeror shall advise its receiving agent in writing of any persons whose registered holdings or purchases or other acquisitions are relevant for the purposes of the acceptance condition. The offeror's receiving agent shall then certify the holding of each such person on the basis of the register.

#### 10.5 EARLY SATISFACTION OF THE ACCEPTANCE CONDITION

In determining whether an acceptance condition of an offer has been satisfied before the final closing date, only the following acceptances and other acquisitions may be counted:

(a) acceptances which meet the requirements of Rule 10.3(a) (except as to the time of receipt of such acceptances by the receiving agent) and the requirements of Rule 10.3(b)(i), (ii) or (iv) or Rule 10.3(c); and

(b) other acquisitions which meet the requirements of Rule 10.4(a)(i) or (ii).



## 10.6 UNCONDITIONALITY AS TO ACCEPTANCES

(a) Except as otherwise directed by the Panel, for the purposes of the Rules an offer shall be deemed to become unconditional as to acceptances and the acceptance condition of the offer shall be deemed to be satisfied when and only when:

- (i) the offeror's receiving agent issues a certificate (a "**receiving agent's certificate**") to the offeror or its financial adviser which certifies the number of shares comprised in acceptances of the offer received which comply with Rule 10.3 or, if appropriate, Rule 10.5(a) and the number of shares otherwise acquired, whether before or during the offer period, the documentation relative to which complies with Rule 10.4; and
- (ii) the numbers so certified are sufficient to meet the requirements of the acceptance condition.

(b) The receiving agent shall issue a receiving agent's certificate to the offeror or its financial adviser promptly after:

- (i) the time at which the offer is due to expire or is revised or extended;
- (ii) the receiving agent is satisfied that the number of shares comprised in acceptances of the offer received and the number of shares otherwise acquired before or during the offer (in each case satisfying the compliance criteria set out in paragraph (a)(i)) are sufficient to meet the requirements of the acceptance condition of the offer; and
- (iii) receipt by the receiving agent of a request from the offeror for such a certificate.

(c) An offeror shall promptly request the receiving agent to issue a receiving agent's certificate whenever the offeror has reason to believe that the number of shares comprised in acceptances of the offer received and the number of shares otherwise acquired before or during the offer (in each case satisfying the compliance criteria set out in paragraph (a)(i)) are sufficient to meet the requirements of the acceptance condition of the offer.

(d) The offeror or its financial adviser shall send copies of each receiving agent's certificate to the Panel and the offeree's financial adviser as soon as possible after it is issued.

## 10.7 RECEIVING AGENTS' PROCEDURES

The offeror and its receiving agent shall comply with the procedures set out in Appendix 1.

**RULE 11. NATURE OF CONSIDERATION TO BE OFFERED -  
VOLUNTARY OFFERS**

**11.1 WHEN A CASH OFFER IS REQUIRED**

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

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

(ii) the offeror or any person acting in concert with it acquires during the Rule 11.1 relevant period securities of the offeree of any class the subject of the offer which represent in the aggregate less than 10% in nominal value of the issued securities of that class, excluding treasury shares, and the Panel, having regard to the General Principles, considers that it is just and proper so to direct and accordingly so directs; or

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

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

(1) the Rule 11.1 relevant period, if subparagraph (i) or (ii) alone is applicable;

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

(3) the Rule 11.1 relevant period or the offer period, if subparagraph (i) or (ii) and subparagraph (iii) are applicable.

(b) Without prejudice to the provisions of paragraph (i), for the purposes of paragraph (a), the price at which securities of the offeree are acquired shall be the price at which the bargain between the acquirer (or, where applicable, his or her broker acting in an agency capacity) and the vendor is struck. Stamp duty and broker’s commission payable by the acquirer shall not be regarded as part of the acquisition price for the purposes of paragraph (a). If the bargain is linked to any other transaction, contract or arrangement, the acquirer shall notify the Panel

of that fact and of the relevant details and the applicable acquisition price to be adopted for the purposes of paragraph (a) shall be subject to the approval of the Panel.

(c) Rules 6.2(c) and (d) shall apply for the purposes of Rule 11.1 as if the reference in those Rules to Rule 6.1 were a reference to Rule 11.1.

(d) Except with the consent of the Panel, paragraph (a) shall be applied by aggregating gross acquisitions of securities made during the Rule 11.1 relevant period and not deducting any securities sold over that period.

(e) The obligation to make cash available under paragraph (a) shall be satisfied if, at the time at which the acquisition giving rise to such obligation was made, a cash offer or a cash alternative offer made or arranged by the offeror at a price per security not less than that required by paragraph (a) was open for acceptance (even if that offer or cash alternative offer ceases to be open for acceptance immediately thereafter or if further acquisitions, at no higher price per security than the offer price required by paragraph (a), are made), provided that, in the case of a cash alternative offer, such offer has been made on the basis that it will be open for acceptance for not less than 14 days after the date on which the document containing the cash alternative offer is sent to shareholders of the offeree.

(f) If an obligation under paragraph (a) arises during an offer period and the offeror is thereby required to revise the offer, the offeror shall make an immediate announcement to that effect, which shall include details of all acquisitions of securities during the Rule 11.1 relevant period and the offer period by the offeror and any person acting in concert with it, together with the details prescribed by Rule 2.7(b).

(g) Unless the Panel rules otherwise, for the purposes of paragraph (a) all securities of the offeree that have been allotted (even if provisionally) but not yet issued and will upon issue confer voting rights shall be deemed to have been issued. The offeree shall inform the Panel of all allotments of securities that may be relevant for this purpose.

(h) If during the Rule 11.1 relevant period or the offer period the offeror or any person acting in concert with it acquires any convertible securities, warrants, options or other subscription rights relating to new or existing securities (in this paragraph (h) referred to as the “**underlying securities**”) of a class the subject of the offer and such convertible securities, warrants, options or other subscription rights are converted or exercised (as applicable), such acquisition shall be treated for the purposes of paragraph (a) as if it were an acquisition of the underlying securities at a price calculated by reference to the

acquisition price of such convertible securities, warrants, options or other subscription rights and the consideration (if any) paid on their conversion or exercise. No obligation will be incurred under Rule 11.1 by the offeror or any person acting in concert with it if during the Rule 11.1 relevant period or the offer period the offeror or any person acting in concert with it exercises or converts (as applicable) such convertible securities, warrants, options or other subscription rights that were acquired before the commencement of the Rule 11.1 relevant period. Any person in doubt as to his or her obligations under this paragraph (h) shall consult the Panel.

(i) Rule 6.2(f) shall apply for the purposes of Rule 11.1 as if the reference in that Rule to Rule 6.1 were a reference to Rule 11.1.

(j) No acquisition of securities which would give rise to an obligation to make a cash offer or provide a cash alternative offer under Rule 11.1 shall be made by any person unless such person is satisfied that the offeror is able and will continue at all relevant times to be able to implement that cash offer or cash alternative offer.

#### 11.2 WHEN A SECURITIES EXCHANGE OFFER IS REQUIRED

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

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

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

(1) during the Rule 11.2 relevant period and in exchange for securities, securities of the offeree of any class the subject of the offer which represent in the aggregate less than 10% in nominal value of the issued securities of that class, excluding treasury shares, and the Panel, having regard in such case to the General Principles, considers that it is just and proper so to direct and accordingly so directs; or

(2) during a period (the “**extended Rule 11.2 relevant period**”) of more than three but not more than 12 months prior to the commencement of the offer period and in exchange for securities, securities of the offeree of any class the subject of the offer which represent in the

aggregate 10% or more in nominal value of the issued securities of that class, excluding treasury shares, and the Panel, having regard in such case to the General Principles, considers that it is just and proper so to direct and accordingly so directs; or

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

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

- (1) the Rule 11.2 relevant period, if subparagraph (i) or (ii)(1) alone is applicable;
- (2) the extended Rule 11.2 relevant period if subparagraph (ii)(2) alone is applicable;
- (3) the offer period, if subparagraph (iii) alone is applicable;
- (4) the Rule 11.2 relevant period or the offer period, if subparagraph (i) or (ii)(1) and subparagraph (iii) are applicable; or
- (5) the extended Rule 11.2 relevant period or the offer period, if subparagraph (ii)(2) and subparagraph (iii) are applicable.

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

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

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

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

RULE 12. THE COMPETITION ACT AND  
THE EUROPEAN COMMISSION

- (a) (i) Every offer which, if it becomes unconditional in all respects, will constitute a merger or acquisition and of which the undertakings involved in such merger or acquisition are obliged to notify the CCPC pursuant to section 18(1) (a “**notifiable offer**”) shall:
- (1) if it is an offer under Rule 9 or Rule 37, be made subject to a condition that shall be satisfied if any one of the following events occurs:
- (A) (subject to paragraph (ii)) the CCPC, in accordance with section 21(2)(a), informs the undertakings which so notified the merger or acquisition that the merger or acquisition may be put into effect; or
- (B) the period specified in section 21(2) (including, if applicable, any period of extension pursuant to section 21(4)) elapses without the CCPC having informed those undertakings of the determination (if any) which it has made under section 21(2); or
- (C) (subject to paragraph (ii)) the CCPC, in accordance with section 22(4), furnishes to those undertakings a copy of its determination (if any), in accordance with section 22(3)(a), that the merger or acquisition may be put into effect; or
- (D) (subject to paragraph (ii)) the CCPC, in accordance with section 22(4), furnishes to the undertakings which made the notification a copy of its determination (if any), in accordance with section 22(3) (c), that the merger or acquisition may be put into effect subject to conditions specified by the CCPC being complied with (but the offeror may stipulate under the offer that such conditions be acceptable to the offeror); or
- (E) the period of 120 working days after the appropriate date (as defined in section 19(6)) elapses, or, where a requirement is made under section 20(2), the period of 120 working days and any period of

suspension that applies pursuant to section 22(4A) after the appropriate date (as defined in section 19(6)) elapses, without the CCPC having made a determination under section 22(3) in relation to the merger or acquisition. For the purposes of this paragraph (E), where section 22(4B) applies, references to “120 working days” shall be substituted with “135 working days”;

- (2) if it is a voluntary offer, be made subject to a condition that shall be satisfied if either of the events specified in subparagraph (1)(A) and (B) occurs; the offeror may elect to include in the condition all or any of the events specified in subparagraphs (1)(C), (D) and (E) as an event or events the occurrence of which shall also satisfy the condition.
- (ii) Every notifiable offer which constitutes a media merger and of which the undertakings involved in such media merger are obliged to notify to the Minister pursuant to section 28B(1) shall:
- (1) if it is an offer under Rule 9 or Rule 37, be made subject to a condition that shall be satisfied if:
    - (A) the Minister informs the undertakings which so notified the merger or acquisition pursuant to Section 28D(1)(a) that he has made a determination that the merger or acquisition will not be contrary to the public interest in protecting plurality of media in Ireland and may be put into effect; or
    - (B) the Minister informs those undertakings pursuant to Section 28D(1)(b) that, in light of proposed commitments offered by those undertakings, he has made a determination that the merger or acquisition will not be contrary to the public interest in protecting plurality of media in Ireland and may be put into effect subject to those commitments; or
    - (C) the Minister informs those undertakings pursuant to Section 28G(1)(a) that he has determined that the merger or acquisition will not be contrary to the public interest in protecting plurality of media in Ireland and may be put into effect; or



- (D) the Minister informs those undertakings pursuant to Section 28G(1)(c) that, in light of proposed commitments offered by those undertakings, he has made a determination that the merger or acquisition will not be contrary to the public interest in protecting plurality of media in Ireland and may be put into effect subject to those commitments.
- (2) if it is a voluntary offer, be made subject to a condition that shall be satisfied if either of the events specified in subparagraph (1)(A) and (B) occurs; the offeror may elect to include in the condition all or any of the events specified in subparagraphs (1)(C) and (D) as an event or events the occurrence of which shall also satisfy the condition.
- (iii) It shall be a term of every offer which, if it becomes unconditional in all respects, will constitute a merger or acquisition to which section 18(1) does not apply that, if the offer is notified to the CCPC pursuant to section 18(3), the offer shall be subject to a condition in accordance with the terms of subparagraphs (i) and (ii) as if it were a notifiable offer.
- (b) (i) If an offer would give rise to a concentration with a Community dimension within the scope of the European Merger Regulation, it shall be a term of the offer that it will lapse if the European Commission either initiates proceedings in respect of the concentration under Article 6(1)(c) of that Regulation or refers the concentration to a competent authority of a Member State under Article 9(1) of that Regulation before the first closing date of the offer or the date when the offer becomes unconditional as to acceptances, whichever is the later.
- (ii) Except in the case of an offer under Rule 9 or Rule 37, the offeror may, in addition, make the offer conditional on a decision being made by the European Commission that there will be no such initiation of proceedings or referral and, if it so wishes, the offeror may stipulate that any terms to which such decision may be subject shall be acceptable to it.
- (iii) Where an offer lapses pursuant to Rule 12(b)(i), the offeror shall, no later than 12.00 noon on the business day following the day on which the offeror receives notification from the European Commission of its decision, make an announcement for the purpose of clarifying its intentions in respect of the offeree.

(iv) Where, following the lapse of an offer pursuant to Rule 12(b)(i):

- (1) the concentration concerned is cleared (with or without conditions or obligations attached) by a decision of the European Commission under Article 8(1) or (2) of the European Merger Regulation or (as the case may be) by a decision of the competent authority of the Member State to which the European Commission referred the concentration under Article 9(1) of that Regulation, the offeror shall immediately consult the Panel and shall, within such time limit as the Panel shall impose, announce either a firm intention to make an offer in respect of the offeree pursuant to Rule 2.7 or that it does not intend to make such an offer, in which latter case the announcement shall be deemed, for all purposes of Rule 2.8, to be a statement to which Rule 2.8 applies made by the offeror in relation to the offeree; or
- (2) the concentration concerned is prohibited by a decision of the European Commission under Article 8(3) of the European Merger Regulation or (as the case may be) by a decision of the competent authority of the Member State to which the European Commission referred the concentration under Article 9(1) of that Regulation, then, except with the consent of the Panel, the offeror, every other person who acted in concert with the offeror and every person who is subsequently acting in concert with the offeror or with any such other person shall, in relation to the offeree, be subject to the restrictions set out in Rule 2.8(c)(i) during the period of 12 months from the date on which the decision concerned is notified to the offeror.

(c) If an offer document states that an offer shall lapse in specified circumstances (including circumstances in which such a condition as is referred to in paragraph (a) or (b) is not satisfied), the offer document shall make clear not only that on such a lapse the offer will cease to be capable of further acceptance but also that the offeror and shareholders of the offeree will thereupon cease to be bound by prior acceptances.

(d) In this Rule, the “**CCPC**” means the Competition and Consumer Protection Commission established under the Competition and Consumer Protection Act 2014, the “**Minister**” means the Minister for Communications, Climate Action and Environment (or any successor to the Minister’s functions under the Competition Act) and the expressions “**merger or acquisition**” and “**media merger**” have the meanings assigned to them in Part 3 and Part 3A, respectively, of that Act and references to sections are references to sections of that Act.

## **RULE 13. PRE-CONDITIONS IN FIRM OFFER ANNOUNCEMENTS AND OFFER CONDITIONS**

### **13.1 SUBJECTIVE CONDITIONS**

Except with the consent of the Panel or where permitted under Rule 12, an offer shall not be made subject to any condition the satisfaction of which depends solely on subjective judgements by the directors of the offeror or of the offeree (as the case may be) or is within their control.

### **13.2 ACCEPTABILITY OF PRE-CONDITIONS**

Except with the consent of the Panel or where the only pre-condition to the making of the offer is the receipt of irrevocable commitments or as otherwise permitted by the Rules, a person shall not announce pursuant to Rule 2.7 a firm intention to make an offer the making of which would be subject to any pre-condition.

### **13.3 INVOKING CONDITIONS AND PRE-CONDITIONS**

- (a) An offeror shall not invoke:
- (i) any condition to the offer (except a condition permitted by Rule 12(a)(i)(2) or by Rule 12(b)(ii) or the acceptance condition); or
  - (ii) any pre-condition to the making of the offer,

so as to cause the offer not to proceed, to lapse or to be withdrawn unless the circumstances that give rise to the right to invoke the condition or pre-condition are of material significance to the offeror in the context of the offer and the offeror has consulted the Panel and the Panel is satisfied that in the prevailing circumstances it would be reasonable for the offeror to do so.

(b) Following the announcement of a firm intention to make an offer, an offeror shall use all reasonable efforts to ensure the satisfaction of every condition and pre-condition to which the offer or the making of the offer is subject.

(c) An offeree shall not invoke, or cause or permit the offeror to invoke, any condition to an offer so as to cause the offer to lapse or to be withdrawn unless the circumstances that give rise to the right to invoke the condition are of material significance to the shareholders of the offeree in the context of the offer and the offeree has consulted the Panel and the Panel is satisfied that in the prevailing circumstances it would be reasonable for the offeree to do so.

(d) In the determination by the Panel under Rule 13.3(a) as to whether in the prevailing circumstances it would be reasonable for the offeror to invoke the condition or pre-condition concerned, the fact, if it be so, that the Panel had approved the inclusion of that condition or pre-condition shall not be taken into account.

#### 13.4 FINANCING CONDITIONS

(a) Except where permitted under Rule 13.4(b), an offer shall not be made subject to a condition relating to financing.

(b) Where the offer is for cash, or includes an element of cash, and the 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.

## PART B - SECTION 5.

## PROVISIONS APPLICABLE TO ALL OFFERS

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**RULE 14. WHERE THERE IS MORE THAN ONE  
CLASS OF SHARE CAPITAL<sup>12</sup>**

**14.1 COMPARABLE OFFERS**

Where the offeree has more than one class of equity share capital, an offeror may not, except with the consent of the Panel, make an offer for any class of such equity share capital that confers voting rights unless it makes a comparable offer for every other class of such equity share capital, whether or not such other class confers voting rights; and the offeror shall consult the Panel in advance. Such a comparable offer for a class of equity share capital which does not confer voting rights may not be made conditional on receipt of any particular level of acceptances in respect of that class, or on the approval of that class, unless the offer for the class of equity share capital which confers voting rights is also conditional on receipt of that particular level of acceptances of that comparable offer. Except in the circumstances referred to in Rules 9.1, 15 and 37, an offeror that makes an offer for a class of equity share capital of the offeree shall not be obliged to make an offer for any securities or class of securities of the offeree which do not represent equity share capital.

**14.2 SEPARATE OFFERS FOR EACH CLASS**

Where an offer is made for more than one class of shares in the offeree, the offeror shall make a separate offer for each such class.

**14.3 OFFER FOR NON-VOTING SHARES ONLY**

Where an offer is made only for a class of shares which does not confer voting rights, the offeror shall not be obliged to make a comparable offer for any other class of shares in the offeree.

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<sup>12</sup>Rule 14 is not applicable to Shared Jurisdiction Companies.

**RULE 15. APPROPRIATE OFFER FOR CONVERTIBLES,  
OPTIONS AND SUBSCRIPTION RIGHTS<sup>13</sup>**

(a) If an offer is made for equity share capital of a relevant company and the offeree has outstanding securities convertible into, or rights or options to subscribe for, shares of the class which is the subject of the offer (which securities, rights and options are together referred to in Rule 15 as “**convertible securities**”), the offeror shall, on the basis of equality of treatment, make an appropriate offer or proposal to the holders of the convertible securities.

(b) The offeree board shall obtain competent independent advice on the offer or proposal to be made to the holders of the convertible securities and shall make known to them the substance and source of such advice, together with the views of the board on the offer or proposal.

(c) If practicable, the offeror shall send the offer or proposal to holders of convertible securities at the same time as the offer document is sent to shareholders of the offeree, provided that if this is not practicable, the offeror shall consult the Panel and shall send the offer or proposal as soon as possible thereafter. Immediately following sending the offer or proposal, the offeror shall (i) announce that the offer or proposal has been sent to the holders of the convertible securities concerned and published on a website in accordance with Rule 26 and (ii) lodge a copy of the offer or proposal with the Panel.

(d) The offer or proposal to holders of convertible securities required by paragraph (a) shall not be made conditional on any particular level of acceptances; provided however that it may be proposed by way of a scheme to be considered at a meeting of the holders of the convertible securities but only on the condition that, if the scheme is not approved at the meeting or is not sanctioned by the court, the offeror shall immediately make an appropriate offer or proposal to holders of convertible securities that is not conditional on any particular level of acceptances or approval.

(e) The offeror shall, where practicable, send simultaneously to the holders of the convertible securities all relevant documents which it sends to shareholders of the offeree in connection with the offer. If the holders of the convertible securities are entitled to exercise their conversion or subscription rights during the course of the offer and to accept the offer in respect of the shares issued by the offeree as a result of such conversion or subscription, that fact shall be stated prominently in the documents sent to them.

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<sup>13</sup>Rule 15 is not applicable to Shared Jurisdiction Companies.

## RULE 16. SPECIAL ARRANGEMENTS AND MANAGEMENT INCENTIVISATION

### 16.1 SPECIAL ARRANGEMENTS WITH FAVOURABLE TERMS

Except with the consent of the Panel, neither an offeror nor any person acting in concert with it may, either during an offer period or when an offer is reasonably in contemplation, make any arrangement with any shareholder or intending shareholder of the offeree which involves a dealing in, or acceptance of an offer for, or otherwise relates to, shares in the offeree, if there would be attached to such arrangement a term favourable to such shareholder or intending shareholder or any other person which is not being extended under the offer to all shareholders of the offeree.

Nor may an offeror or any person acting in concert with it make any such arrangement with any person who, whilst not a shareholder or intending shareholder of the offeree, is interested in relevant securities of the offeree if there would be attached to such arrangement a term favourable to such person which is not being extended under the offer to all shareholders of the offeree.

If any requirement of Rule 16 is not observed, the Panel may, if it is of the opinion that, having regard to the General Principles, it is appropriate so to direct, direct the offeror or any person acting in concert with it to make available to acceptors of the offer such additional consideration as the Panel may determine to be fair.

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

### 16.2 MANAGEMENT INCENTIVISATION

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



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

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

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

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

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

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

**RULE 17. ANNOUNCEMENTS OF ACCEPTANCE LEVELS ETC.****17.1 TIMING AND CONTENTS**

(a) By 8.00 a.m. on the business day (in Rule 17 referred to as the “**relevant day**”) following the day on which an offer is due to expire, or becomes unconditional as to acceptances, or is revised or extended, an offeror shall make an appropriate announcement in accordance with Rule 30.1. The announcement shall state the total number (as nearly as practicable) of:

- (i) securities of the offeree for which acceptances of the offer have been received by the applicable time;
- (ii) securities of the offeree held before the offer period;
- (iii) securities of the offeree acquired or agreed to be acquired during the offer period;
- (iv) securities of the offeree for which acceptances of the offer have been received and which were subject to an irrevocable commitment or a letter of intent procured by the offeror or any person acting in concert with the offeror;
- (v) securities of the offeree in respect of which the offeror or any person acting in concert with it has an outstanding irrevocable commitment or a letter of intent, including those details of the nature of the commitment or letter as are prescribed by Rule 2.9(a); and
- (vi) the total number of securities of the offeree which the offeror may count towards the satisfaction of the acceptance condition to the offer,

and shall specify the percentages of the relevant classes of securities represented by those figures.

(b) An announcement under paragraph (a) shall also state details of all relevant securities of the offeree in which the offeror or any person acting in concert with it is interested, in each case specifying the nature of the interests in accordance with the applicable provisions of Rule 8.6; and details of all short positions of each such person in any class of relevant securities of the offeree in accordance with the applicable provisions of that rule.

(c) An announcement under paragraph (a) shall make clear the extent to which acceptances of the offer have been received from persons acting in concert with the offeror and shall state the number of securities of the offeree (as nearly as practicable) held before the offer period or acquired or agreed to be acquired during the offer period by persons acting in concert with the offeror.

(d) An offeror shall also make an announcement under paragraph (a) in respect of an alternative offer on the business day following the day on which an alternative offer is due to expire, even if the offer itself is not due to expire at that time.

(e) An offeror shall not make any statement other than an announcement in conformity with paragraph (a) about the level of acceptances of the offer without the consent of the Panel. If, during the course of an offer, any statements, either oral or in writing, are made by an offeror or its advisers about the level of acceptances of the offer or the number or percentage of shareholders who have accepted the offer, the offeror shall make an immediate announcement in conformity with paragraph (a).

(f) If the offeree proposes to draw attention to withdrawals of acceptances of the offer, it shall consult the Panel before any announcement is made.

(g) Acceptances of an offer which are not complete in all respects and acquisitions may be included in the totals in an announcement under paragraph (a) only if they could be counted towards satisfying an acceptance condition under Rules 10.3 and 10.4.

## **17.2 CONSEQUENCES OF FAILURE TO ANNOUNCE**

If an offeror, having announced the offer to be unconditional as to acceptances, fails by 3.30 p.m. on the relevant day to make an announcement in accordance with the requirements of Rule 17.1, immediately thereafter each acceptor shall become entitled to withdraw his or her acceptance. Subject to Rule 31.6, the offeror may terminate this right of withdrawal, in respect of acceptances not already withdrawn, not less than 8 days after the relevant day by confirming, if such is the case, that the offer is still unconditional as to acceptances and by making an announcement in accordance with the requirements of Rule 17.1; for the purposes of Rule 31.2, the offer shall remain open for acceptance for not less than 14 days after the date of such confirmation and announcement.

## **17.3 ANNOUNCEMENT FOLLOWING SATISFACTION OF ALL CONDITIONS**

By 8:00 a.m. on the business day following the day on which an offer becomes unconditional in all respects, the offeror shall make an announcement to that effect in accordance with Rule 30.1, and shall include in such announcement:

- (i) the details, as at the time of satisfaction of all conditions of the offer, required in an announcement made under Rule 17.1(a);

(ii) the basis on which the offer is to continue to be open for acceptance, consistent with the provisions of Rule 31.2; and

(iii) the arrangements for and timing of settlement of consideration under the offer.

**RULE 18. THE USE OF PROXIES AND OTHER AUTHORITIES IN  
RELATION TO ACCEPTANCES**

An offeror may not require a shareholder as a term of his or her acceptance of an offer to appoint a proxy to exercise the voting rights conferred by his or her shares in the offeree, or to exercise any other rights or take any other action in relation to those shares, unless the appointment is made on the following terms, which shall be set out in the offer document:

- (a) the proxy may not exercise such voting or other rights or take such other action unless the offer has become unconditional in all respects or, in the case of the exercise of voting rights by the proxy, the resolution concerned is the subject of the last condition of the offer remaining to be satisfied (other than any condition referred to in Rule 24.10) and the offer will become unconditional in all respects (except, where relevant, for the satisfaction of any condition referred to in Rule 24.10) or lapse depending upon the result of the vote on that resolution;
- (b) where relevant, such voting rights are to be exercised with a view to satisfying any outstanding condition of the offer;
- (c) the appointment ceases to be valid if the acceptance is withdrawn; and
- (d) the appointment applies only to shares assented to the offer.

**PART B - SECTION 6.****CONDUCT DURING THE OFFER**

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## **RULE 19. COMMUNICATIONS**

### **19.1 STANDARDS OF CARE**

(a) Every person who issues, during the course of an offer, a document, advertisement or statement in connection with the offer or contemplated offer, and the offeror or offeree on whose behalf it is issued, shall ensure that it satisfies the same standards of accuracy, completeness and fair presentation as would be required of a prospectus.

(b) Every such document, advertisement and statement shall clearly state the source for any fact which is material to any argument contained in it, including sufficient detail to enable the significance of the fact to be assessed; provided however that if the information has been included in a document previously sent to shareholders, an appropriate cross-reference shall be sufficient.

(c) A quotation (including, inter alia, a quotation from a newspaper or a stockbroker's circular) shall not be used out of context, and details of its source shall be included, in any such document, advertisement or statement. No such quotation shall be included in any such document, advertisement or statement unless the board of the company which issues it is prepared, where appropriate, to corroborate or substantiate the contents of the quotation and the directors' responsibility statement required by Rule 19.2 is included in the document, advertisement or statement.

(d) Every pictorial representation, chart, graph and diagram which is included in any such document or advertisement shall be presented without distortion and, when relevant, shall be to scale.

(e) Rules 19.1(a) to (d) do not apply to any separate opinion of the employee representatives of the offeree that is appended to an offeree board circular in accordance with Rule 25.1(b) or Rule 32.5(b).

### **19.2 RESPONSIBILITY**

(a) Except with the consent of the Panel, all documents, including circulars to shareholders of the offeree, press releases and announcements (including announcements which initiate an offer period), and all advertisements published in connection with an offer or contemplated offer by or on behalf of an offeror or the offeree during the course of the offer shall state that the directors of the offeror or (as the case may be) of the offeree accept responsibility for the information contained in the document or advertisement and that, to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in the document or advertisement is in accordance with the facts and, where appropriate, that it does not omit anything likely

to affect the import of such information; provided that Rule 19.2 shall not apply to disclosures of dealings and positions in securities, to advertisements falling within category (1), (2) or (8) of Rule 19.4(a) (iii) or to advertisements which contain only information already published in a circular which included the statement required by Rule 19.2 or to any separate opinion of the employee representatives of the offeree that is appended to an offeree board circular in accordance with Rule 25.1(b) or Rule 32.5(b)

(b) Except with the consent of the Panel, a director may not be excluded from a statement required by paragraph (a). If the Panel consents to such an exclusion in any case, the document or advertisement concerned shall disclose the exclusion and the reasons for it.

(c) Except with the consent of the Panel:

(i) if an offeror is a subsidiary, the directors of the ultimate parent company, and

(ii) in the case of a management buy-out or similar transaction, the managers of the offeree associated with the offeror and the directors of any company which holds or proposes to acquire a beneficial interest of 20% or more in the equity share capital of the offeror, and

(iii) such other person or persons as the Panel, having regard to the General Principles, considers should be so included,

shall be joined with the directors of the offeror in the responsibility statement required by paragraph (a).

### 19.3 AVOIDANCE OF MISLEADING STATEMENTS

Neither an offeror, the offeree nor any person acting in concert with either of them shall during the course of the offer issue any statement which, even if not factually inaccurate, may mislead shareholders and the market or may create uncertainty. An offeror shall not make a statement to the effect that it may improve its offer, or that it may make a change to the structure, conditionality or the non-financial terms of its offer, unless it commits itself to doing so and specifies the improvement or change.

### 19.4 ADVERTISEMENTS

(a) (i) Except with the consent of the Panel, no person may publish an advertisement in connection with an offer or possible offer during the course of the offer unless the advertisement falls within one of the categories listed in subparagraph (iii).

(ii) Except where the advertisement falls within category (1), (8) or (9) in subparagraph (iii), no person shall publish an



advertisement in connection with an offer or possible offer during the course of the offer unless its content, format and publication schedule have been approved by the Panel.

(iii) The categories of advertisement referred to in subparagraph (i) are as follows:

- (1) product advertisements not bearing on an offer or possible offer; (if the person proposing to publish an advertisement has any doubt as to the applicability of this category to it, he or she shall consult the Panel);
  - (2) corporate image advertisements not bearing on an offer or possible offer or the financial performance of a party to the offer;
  - (3) advertisements confined to factual and non-controversial information about an offer (including, inter alia, reminders as to closing times or the value of an offer); such advertisements shall not include argument, invective or opinion in relation to the offer;
  - (4) advertisements comprising preliminary or interim results and their accompanying statement, provided that such statement does not include argument, invective or opinion concerning an offer;
  - (5) advertisements giving information, the publication of which by advertisement is required or specifically permitted by the rules of the Stock Exchange or any equivalent listing authority;
  - (6) advertisements communicating information relevant to holders of bearer securities;
  - (7) advertisements comprising a tender offer under the Substantial Acquisition Rules;
  - (8) advertisements which are notices relating to court schemes, notices of compulsory acquisition or other notices required by applicable law or direction of a court; and
  - (9) advertisements published with the specific consent of the Panel.
- (b) Each advertisement published in connection with an offer or possible offer shall clearly and prominently identify the person on whose behalf it is published.
- (c) For the avoidance of doubt, for the purposes of the Rules:

- (i) the word “**advertisement**” shall include:
  - (1) every form of advertisement and accordingly its meaning shall not be restricted to advertisements that promote products, services or property or rights of any kind; and
  - (2) not only a press advertisement but also an advertisement in other media, including, inter alia, television, radio, internet, video, audio tape and poster; and
- (ii) a publication that would otherwise be treated as an advertisement shall not be treated differently merely because the content, or part of the content, of the publication has been previously published, whether in the same or any different form, context or medium and whether or not in connection with an offer or possible offer.

#### 19.5 TELEPHONE CAMPAIGNS

(a) Except with the consent of the Panel, neither an offeror nor the offeree nor any person acting in concert with either of them shall during the course of an offer conduct any campaign in connection with the offer or contemplated offer in which shareholders of the offeree, or other persons interested in offeree securities, are contacted by telephone unless such campaign is conducted on its behalf by staff of a financial adviser to the offeror or (as the case may be) to the offeree who are fully conversant with the requirements of, and their responsibilities under, the Rules. The persons who conduct any such campaign may use only previously published information which remains accurate and is not misleading at the time it is quoted; they shall not put any person contacted by them under any pressure and they shall encourage all such persons to consult their professional advisers.

(b) If, notwithstanding the foregoing paragraph, any new information is given to some shareholders or other persons interested in offeree securities during any such campaign, the offeror or (as appropriate) the offeree shall ensure that such information is immediately made generally available to shareholders in the manner described in Rule 20.2(a)(ii).

#### 19.6 INTERVIEWS AND DEBATES

(a) An offeror or the offeree or any person acting in concert with either of them who, during the course of the offer, is interviewed in connection with the offer or contemplated offer on radio, television, the internet or any other medium shall use all reasonable endeavours to ensure that the sequence of the interview is not broken by the

insertion of comments or observations by others which were not made in the course of the interview.

(b) Neither an offeror nor the offeree nor any representative of either of them shall during the course of an offer release any new information bearing on the offer or contemplated offer in any interview or discussion with the media. If, notwithstanding this, any new information is made public as a result of such an interview or discussion, the relevant party shall publish such information as required by Rule 20.2(a)(ii).

(c) Representatives of one or more offerors and of the offeree may, during the course of an offer, participate in a joint interview or debate which involves the engagement with each other (either directly or through a third party) of representatives of an offeror and the offeree or of representatives of two or more competing offerors and which is to be simultaneously or subsequently broadcast on or through radio, television, the internet or any other medium, provided that:

(i) an appropriate representative of the financial adviser to each offeror and the offeree represented at the interview or debate shall himself or herself also be present at and entitled to participate in such interview and debate;

(ii) if any misleading or inaccurate statement is made by the representative of an offeror or of the offeree during the course of the interview or debate, the financial adviser to the party concerned shall, where such adviser is aware or ought reasonably to be aware that the statement is misleading or inaccurate, immediately correct such statement during the course of the interview or debate;

(iii) the representative of each financial adviser present thereat shall, during the course of the interview or debate, use all reasonable endeavours to ensure that no new information bearing on the offer is disclosed by that adviser's client during the course of the interview or debate; and

(iv) the representative of the financial adviser to each participating offeror and offeree shall confirm in writing to the Panel, not later than 12.00 noon on the business day following the date of the interview or debate, that no new information bearing on the offer was disclosed by that adviser's client during the course of such interview or debate.

Any person who is in any doubt as to his or her obligations under this paragraph (c) shall consult the Panel.

**RULE 20. EQUALITY OF INFORMATION****20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS**

Information and opinions about companies involved in an offer or contemplated offer and which is tendered by or on behalf of an offeror or the offeree during the course of an offer shall be made equally available by it to all the holders of shares in the offeree of the class or classes the subject of the offer as nearly as possible at the same time and in the same manner.

**20.2 MEETINGS AND TELEPHONE CALLS WITH SHAREHOLDERS AND OTHERS**

(a) (i) Representatives of the offeror or the offeree or their respective advisers may hold meetings during the offer period with shareholders, or other persons interested in relevant securities, of either the offeror or the offeree, or with analysts, stockbrokers or others engaged in investment management or advice, provided that such representatives do not disclose any material new information or express any significant new opinion and the following provisions are observed. Such representatives shall not put any shareholder, or any other person interested in relevant securities, of the offeree present at any such meeting under any pressure and they shall encourage all such persons to consult their professional advisers. Except with the consent of the Panel, an appropriate representative of the financial adviser or corporate broker to the offeror or (as the case may be) the offeree shall be present at any such meeting. It shall be the duty of that representative to confirm in writing to the Panel, not later than 12.00 noon on the business day following the date of the meeting, that no such material new information was disclosed and no significant new opinion was expressed at such meeting. The written confirmation shall also include the names of the individuals who attended the meeting and their organisations. Any such representative who is in doubt as to the status, for the purposes of Rule 20.2, of any information or opinion shall consult the Panel.

(ii) If, notwithstanding subparagraph (i), any material new information or significant new opinion is disclosed or expressed at any such meeting, the offeror or (as the case may be) the offeree shall as soon as possible thereafter publish such information or opinion in an announcement in accordance with Rule 30.1. Every such announcement shall include the directors' responsibility statement in accordance with Rule 19.2. If such new information or opinion is not capable of being substantiated as required by these Rules

(including, inter alia, a profit forecast), the announcement shall make this clear and shall contain a formal withdrawal of the information or opinion. If there is any dispute as to whether the requirements of this paragraph (a) have been complied with, it will be the duty of the financial adviser or corporate broker to the offeror or (as the case may be) the offeree to satisfy the Panel that those requirements have been complied with. Every financial adviser shall ensure that no such meeting is arranged on behalf of its client without its knowledge.

(iii) The above provisions of this paragraph (a) shall apply to all such meetings held during an offer period wherever they take place and whether the meeting is with one or more persons or firms. A communication of information or opinion by telephone or electronic means (other than a communication to which Rule 19.5, Rule 20.5 and Rule 20.6 apply) shall be deemed to be a meeting for the purposes of Rule 20.2. Subparagraph (i) shall not apply to a meeting with employees in their capacity as such (rather than in their capacity as shareholders), but the offeror or (as the case may be) the offeree shall consult the Panel in advance of such a meeting if any such employees are interested in a significant number of relevant securities of the offeree.

(b) (i) Rule 20.1 shall not prevent the issue of investment research during the course of an offer by brokers or advisers to, or by other persons remunerated by or acting in concert with, an offeror or the offeree provided that such issue has previously been approved by the Panel.

(ii) When issuing investment research during the course of the offer, a person acting in concert with an offeror or the offeree shall ensure that such investment research, if including information on a party to the offer, does not include any statement of fact or opinion derived from information which is not generally available; and, without prejudice to the generality of the foregoing, that such information does not include any profit forecast, quantified financial benefits statement, asset valuation or estimate of other data material to the offer (unless, and then only to the extent that, the offer documents or, as the case may be, offeree board circulars contain such forecast, statement, valuation or estimate prepared in accordance with Rule 28). The status of the person acting in concert shall be clearly disclosed to its clients at the time.

(iii) Where a person acting in concert with an offeror or the offeree issues investment research during the course of an offer, that person shall send a copy of the final version of the research to the Panel at the time of its release.

**20.3 EQUALITY OF INFORMATION TO OFFERORS<sup>14</sup>**

(a) Irrespective of any preference that the offeree board may have for one offeror over another, the offeree shall promptly provide any information, including particulars of shareholders, specifically requested by an offeror if, and to the extent that, the same or substantially the same information has previously been made available by the offeree to another offeror, provided that:

(i) unless the Panel directs otherwise in the circumstances of a particular case, this requirement shall apply only if the existence of that other offeror (but not necessarily its identity) has been the subject of an announcement under Rule 2.4(a) or Rule 2.7 and the offer period relative to the offer or possible offer by that other offeror has not ended; and

(ii) where the offeree board is not satisfied that the offeror concerned has available to it resources sufficient to implement an offer, the offeree may apply to the Panel to direct that compliance with Rule 20.3 by it may be deferred pending the satisfaction by that offeror of such conditions as the Panel may specify in the circumstances of the particular case.

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

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

(c) Where an offer or possible offer (the “first offer”) would or might oblige the offeror to increase by 100% or more its existing issued share capital that confers voting rights, a person who subsequently makes an offer (the “second offer”) in respect of either the offeror or the offeree in the first offer (the “target”) shall (if the target is a relevant company and paragraph (a) is not otherwise applicable) in connection with the second offer have the same right

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<sup>14</sup>See Rule 2.1(c) of Part A.

under paragraph (a) to receive information made available by the target to the other party to the first offer in connection with that offer as if the target were an offeree that had previously made the information available to another offeror in connection with an offer in respect of the target.

(d) If the offer is a management buy-out or similar transaction, the information which, if specifically requested by a competing offeror, Rule 20.3 requires the offeree to provide to that competing offeror shall be that information generated by the offeree (including the management of the offeree acting in their capacity as such) which is passed to external providers or potential providers of finance (whether equity or debt) to the offeror. The directors of the offeree who are involved in making such offer shall co-operate with the independent directors of the offeree and its advisers in the assembly of this information.

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

#### **20.4 INFORMATION TO INDEPENDENT DIRECTORS IN MANAGEMENT BUY-OUTS**

If the offer is a management buy-out or similar transaction, the offeror shall, on request, promptly furnish the independent directors of the offeree or their advisers with all information that has been furnished by the offeror to external providers or potential providers of finance (whether equity or debt) for the buy-out.

#### **20.5 VIDEOS**

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

(b) Subject to paragraph (c), a video published during the course of an offer by or on behalf of an offeror or the offeree (other than a video published for, and accessible only by, employees in their capacity as such) relating to the offer must comprise only a director or senior executive reading from a script or participating in a scripted interview. Any such video may be published only with the prior consent of the Panel.

(c) Subject to paragraph (a), an offeror or the offeree may publish during the course of an offer a video relating to its financial performance. An appropriate representative of the financial adviser or

corporate broker to the offeror or (as the case may be) the offeree shall confirm in writing to the Panel before publication of any such video that no material new information is disclosed and no significant new opinion is expressed in the video.

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

## 20.6 SOCIAL MEDIA

Social media must not be used by or on behalf of an offeror or the offeree to publish information relating to an offer, other than for the publication of:

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

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

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

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

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



**RULE 21. FRUSTRATING ACTION****21.1 RESTRICTIONS****(a) Except:**

- (i) with the approval of the offeree in general meeting;**
- (ii) with the consent of the Panel in the case of a proposed action of the type described in any of subparagraphs (1) to (5) where the Panel is satisfied that such action would not constitute frustrating action;**
- (iii) with the consent of the Panel where the holders of securities carrying more than 50% of the voting rights in the offeree state in writing that they approve the action proposed and would vote in favour of any resolution to that effect proposed at a general meeting of the offeree;**
- (iv) with the consent of the Panel in pursuance of a contract entered into prior to the announcement of the offer or (as the case may be) to any such earlier time as is referred to below; or**
- (v) with the consent of the Panel where a decision to take the proposed action was made prior to the announcement of the offer or (as the case may be) to any such earlier time as is referred to below and such decision: (1) has been partly or fully implemented before that time; or (2) has not been partly or fully implemented before that time but is in the ordinary course of business,**

**during the course of an offer or at any earlier time at which the offeree board has reason to believe that the making of an offer in respect of the offeree is or may be imminent the offeree shall not, and shall procure that no subsidiary of the offeree shall:**

- (1) allot or issue any authorised but unissued shares (including treasury shares) or (subject to paragraph (c)) redeem or purchase any of its own securities;**
- (2) issue or grant an option in respect of any unissued shares (including treasury shares);**
- (3) create or issue, or permit the creation or issue of, any security conferring rights of conversion into or subscription for shares;**
- (4) sell, dispose of or acquire, or agree to sell, dispose of or acquire, any assets of a material amount;**
- (5) enter into any contract otherwise than in the ordinary course of business; or**
- (6) take any action, other than seeking alternative offers, which may result in frustration of an offer or possible offer or in offeree shareholders being denied the opportunity to decide on the merits of such an offer or possible offer.**

(b) Where shareholder approval is to be sought in general meeting for a proposed action in accordance with Rule 21.1(a)(i):

(i) the board of the offeree must obtain competent independent advice as to whether the financial terms of the proposed action are fair and reasonable;

(ii) the Panel must be consulted regarding the date of the general meeting;

(iii) the board of the offeree must send a circular to shareholders as soon as practicable after the announcement of the proposed action setting out the following details:

(1) full details of the proposed action;

(2) the opinion of the board of the offeree on the proposed action and the board's reasons for forming its opinion;

(3) the substance of the advice given to the board of the offeree as to whether the financial terms of the proposed action are fair and reasonable;

(4) information about the current status of the offer or possible offer; and

(5) any other information necessary to enable shareholders to make an informed decision; and

(iv) the offeree must publish the circular and any contracts entered into in connection with the proposed action on a website.

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

(d) The Panel must be consulted in advance if there is any doubt as to whether any proposed action may fall within Rule 21.1(a)(1) to (6).

## 21.2 INDUCEMENT FEES

Except with the consent of the Panel, no offeree nor any person acting in concert with an offeree shall enter into any contract or arrangement to pay any compensation in monetary or other form to, or to provide any indemnity in respect of the costs of, an offeror or any person acting in concert with an offeror, where the relevant obligation would be contingent in any respect upon the relevant offer or proposed offer lapsing or not being made.

**RULE 22. RESPONSIBILITIES OF THE OFFEREE REGARDING  
REGISTRATION PROCEDURES**

The offeree and its registrar shall comply with the procedures set out in Appendix 1. The offeree shall also ensure that transfers of securities of the offeree are registered promptly during the course of an offer.

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**RULE 23. THE GENERAL OBLIGATION AS TO INFORMATION****23.1 SUFFICIENT INFORMATION**

(a) The offeror and the offeree board shall, as appropriate, give sufficient information, and the offeree board shall also give sufficient advice, to shareholders of the offeree to enable them to reach a properly informed decision as to the merits or demerits of an offer. Such information and advice shall be sent by the offeror or (as the case may be) the offeree board to shareholders early enough to enable them to make a decision in good time. In the context of provision of information, the obligation of the offeror towards the shareholders of the offeree shall be no less than the obligation of the board of a company towards its own shareholders.

(b) If an offeror has announced a possible offer pursuant to Rule 2.4(a), the making of which is subject to a pre-condition relating to action by shareholders of the offeree (including, inter alia, the rejection of a proposed acquisition or disposal by the offeree), the first major circular sent by the offeror to the shareholders of the offeree shall include the information that would be required by Rule 24 to be included in that circular if it were an offer document.

**23.2 CONSENT TO INCLUSION OF ADVICE, OPINIONS AND REPORTS**

If any document or announcement published in connection with an offer by or on behalf of the offeree or offeror includes:

- (a) the substance of the advice given to the offeree board or to the offeror by the adviser pursuant to Rule 3.1(a) or Rule 3.2(a);
- (b) reports on a profit forecast or a quantified financial benefits statement given by reporting accountants and any financial adviser in accordance with Rule 28;
- (c) a valuation report given by a valuer in accordance with Rule 29;  
or
- (d) any other recommendation, opinion or report of an adviser, including a financial adviser or a consultant,

the document or announcement shall, unless issued by the adviser concerned, include a statement that each of the adviser(s), the reporting accountants and/or the valuer (as appropriate) has given and not withdrawn their consent to the issue of the document or announcement with the inclusion of their advice, recommendation, opinion or report (as appropriate) in the form and context in which it is included.

**RULE 24. OFFEROR DOCUMENTS****24.1 THE OFFER DOCUMENT**

(a) No person shall send an offer document to the shareholders of the offeree unless it has previously announced, in accordance with Rule 2.7, its firm intention to make that offer.

(b) Except with the consent of the Panel and subject to Rule 2.11, the offeror shall send the offer document to the shareholders of the offeree within 28 days after the date of the announcement of a firm intention to make an offer.

(c) Simultaneously with the sending of the offer document under paragraph (b), both the offeror and the offeree shall make the offer document readily available to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

**24.2 INTENTIONS REGARDING THE OFFEREE, THE OFFEROR AND THEIR EMPLOYEES**

(a) An offeror shall inform the shareholders of the offeree of the following matters in the offer document:

(i) its intentions regarding the future business of the offeree and its subsidiaries;

(ii) its strategic plans for the offeree and their likely repercussions on employment and on the locations of the offeree's places of business, including on the location of the offeree's headquarters and headquarters' functions;

(iii) its intentions regarding any redeployment of the fixed assets of the offeree and its subsidiaries;

(iv) the long-term commercial justification for the offer;

(v) its intentions with regard to the continued employment of the employees and management of the offeree and of its subsidiaries, including any material change in the conditions of employment; and

(vi) its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree.

(b) If the offeror has no intention to make any changes in relation to the matters described under (a) above, or if it considers that its strategic plans for the offeree will have no repercussions on

employment or the location of the offeree' places of business, it must make a statement to that effect.

(c) Where the offeror is a company and insofar as it is affected by the offer the offeror shall also disclose in the offer document the information set out in paragraphs (a)(i), (ii) and (v) in relation to itself.

#### **24.3 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE AND THE OFFER**

Except with the consent of the Panel:

(a) the offer document (including, where relevant, any revised offer document) shall contain the following information about the offeror:

(i) its audited consolidated accounts for the last two financial years or details of the website address where its audited consolidated accounts for the last two financial years have been published and a statement that the accounts have been incorporated into the offer document by reference to that website in accordance with Rule 24.15;

(ii) in the case of a securities exchange offer, all known material changes in its financial or trading position which has occurred since the end of the last financial period for which audited accounts, a preliminary statement of annual results, a half-yearly financial report or interim financial information has been published or a statement that there are no known material changes;

(iii) any preliminary statement of annual results, half-yearly financial report or interim financial information published since the date of its last published audited accounts or details of the website address where any such statement, report or information has been published and a statement that any such statement, report or information has been incorporated into the offer document by reference to that website in accordance with Rule 24.15;

(iv) the names of the offeror's directors;

(v) the nature of its business and its financial and trading prospects;

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



- (vii) if the offeror is not a relevant company, a statement listing the identity of each person with an interest, direct or indirect, of 5% or more in any class of relevant securities of the offeror, or who would upon completion of the acquisition of the offeree have an interest, direct or indirect, of 5% or more in any class of relevant securities of the offeree, and such further information as the Panel may require in the circumstances of the particular case;
- (b) the offer document (including, where relevant, any revised offer document) shall include:
- (i) a heading stating “If you are in doubt about this offer, you should consult an independent financial adviser who, if you are taking advice in Ireland, is authorised or exempted under the European Communities (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017) as amended”;
  - (ii) the date when the document is sent, the name and address of the offeror, including where the offeror is a company, its type and the address of its registered office;
  - (iii) the identity of every person acting in concert with the offeror or, to the extent that this is known to the offeror, with the offeree, including, in the case of a company, its type, the address of its registered office and its relationship with the offeror or, to the extent that this is known to the offeror, with the offeree, as applicable;
  - (iv) details of each class of securities for which the offer is made, including the maximum and minimum percentages of those securities which the offeror undertakes to acquire;
  - (v) the terms of the offer, the total consideration offered including the consideration offered for each class of security and particulars of the way in which the consideration is to be paid in accordance with Rule 31.8;
  - (vi) in the case of an offer under Rule 9, the information required under subparagraph (b)(v) shall include the method employed under Rule 9.4 in calculating the consideration offered;
  - (vii) all conditions to which the offer is subject (including any termination events prescribed by any implementation agreement between the offeror and offeree if it is a condition to the offer that the implementation agreement not have been terminated);
  - (viii) particulars of all documents required, and procedures to be followed, for acceptance of the offer;

(ix) details of every agreement or arrangement to which the offeror is party and which relates to the circumstances in which the offeror may or may not invoke or seek to invoke a condition to its offer and to the consequences of its doing so, including details of any break fees payable as a result;

(x) if the Panel has given consent to the offeree board to enter into a contract or arrangement of the kind described in Rule 21.2, details of that contract or arrangement;

(xi) the market price quotations for the securities the subject of the offer, and (in the case of a securities exchange offer) for the securities offered, for the first business day in each of the six months immediately before the date of the offer document, for the last business day before the commencement of the offer period and for the latest practicable date before the offer document is sent. Price quotations stated in respect of securities quoted on a recognised market shall be the closing dealt price on the relevant day as published by that market. Where securities the subject of the offer or securities offered as consideration under the offer are quoted on more than one recognised market, the relevant quotations on each such market shall be included. If there have been no dealings in the securities on any relevant day, the price to be quoted shall be the midpoint between the high and low market guide prices, or the market guide price if only one is quoted. If any of the securities are not quoted on a recognised market, any information available as to the number and price of transactions which have taken place during the preceding six months shall be stated together with the source, or an appropriate negative statement;

(xii) in the case of a securities exchange offer, full particulars of the securities being offered, including the rights attaching to them, the first dividend or interest payment in which the new securities to be issued as consideration under the offer will participate and how the securities will rank for dividends or interest, capital and redemption; a statement indicating the effect of acceptance on the capital and income position of the offeree's shareholders; and a statement specifying whether an application for quotation for the securities has been or will be made to a recognised market and whether a quotation on any other stock exchange or market has been or will be sought;

(xiii) in the case of a securities exchange offer, the effect of full acceptance of the offer upon the offeror's earnings and assets and liabilities which may be significant for a proper appraisal of the offer;

(xiv) in the case of a takeover bid, the compensation offered for any removal of rights pursuant to Regulation 18, together with particulars of the way in which the compensation is to be paid and the method employed in determining it;

(xv) the national law which will govern contracts concluded between the offeror and the holders of securities of the offeree as a result of the offer, and the competent courts;

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

(xvii) the information required under Rule 2.9(a) in respect of any irrevocable commitment or letter of intent which the offeror or any person acting in concert with it has procured in relation to relevant securities of the offeree or, if appropriate, the offeror;

(xviii) a list of the documents which the offeror has published on a website in accordance with Rules 26.2 and 26.3 and the address of the website on which the documents are published; and

(xix) any profit forecast or quantified financial benefits statement, and any related reports or confirmations, required by Rule 28;

(c) subject to Rule 25.6(b), the offer document shall contain information on the offeree on the same basis as set out in subparagraphs (a)(i) to (iv);

(d) the offer document shall contain a description of how the offer is to be financed and the source(s) of the finance. Details shall be provided of the debt facilities or other instruments entered into in order to finance the offer and to refinance the existing debt or working capital facilities of the offeree and, in particular:

(i) the amount of each facility or instrument;

(ii) the repayment terms;

(iii) interest rates, including any “step up” or other variation provided for;

(iv) any security provided;

(v) a summary of the key covenants;

(vi) the names of the principal providers of finance; and

- (vii) if applicable, details of the time by which the offeror will be required to refinance the acquisition facilities and of the consequences of its not doing so by that time;
- (e) if any document issued by an offeror contains a comparison of the value of the offer with previous prices of the offeree's shares (and irrespective of what other comparisons are included):
  - (i) a comparison between the current value of the offer and the price of the offeree's shares on the last business day prior to the commencement of the offer period; and
  - (ii) if the consideration includes quoted securities, a comparison between the value of the offer, based on the price of such securities on the last day prior to the commencement of the offer period, and the price of the offeree's shares on that day,shall be prominently included in that document;
- (f) if the offeror is a subsidiary of another company, the offer document shall also contain in respect of the offeror's ultimate holding company the information specified in paragraph (a), by reference to consolidated accounts where applicable, and the information specified in subparagraph (b)(xiii), unless the Panel agrees that the subsidiary concerned is of sufficient substance in relation to the offeror's group and to the offeree to render such additional information unnecessary;
- (g) in the case of a securities exchange offer, if the consideration includes securities of a company other than the offeror, the offer document shall also contain in respect of that company the information specified in paragraph (a); and
- (h) the offeror shall consult the Panel in advance in any case to which subparagraph (a)(vii) applies, or may apply, regarding the application of its provisions to that particular case.

#### 24.4 INTERESTS AND DEALINGS IN RELEVANT SECURITIES

- (a) The offer document shall state:
  - (i) details of all relevant securities of the offeree in which the offeror is interested, in each case specifying the nature of the interests concerned in accordance with the applicable provisions of Rule 8.6; and details of all short positions of the offeror in any class of relevant securities of the offeree in accordance with the applicable provisions of that Rule;
  - (ii) the same details as in (i) above in relation to each of:
    - (1) the directors of the offeror;
    - (2) any other person acting in concert with the offeror;

(3) any person with whom the offeror, or any person acting in concert with the offeror, has any arrangement to which Rule 8.7 applies;

(iii) in the case of a securities exchange offer, the same details as in subparagraph (i) in respect of any relevant securities of the offeror in relation to each of the persons listed in subparagraph (ii);

(iv) in the case of a securities exchange offer, the amount of relevant securities of the offeror which the offeror has redeemed or purchased during the period beginning 12 months prior to the commencement of the offer period and ending on the latest practicable date prior to the date on which the offer document is sent, together with details of each such redemption and purchase, including dates and prices.

(b) If in the case of any of the persons referred to in paragraph (a)(i), (ii) or (where applicable) (iii) there are no interests in relevant securities or short positions to be disclosed, that fact shall be stated in the offer document. This shall not apply in the case of paragraph (a)(ii)(3) if no arrangements of the kind referred to in that subparagraph exist.

(c) If any person referred to in Rule 24.4(a)(i) to (iii) has dealt in any of the relevant securities of the offeree (or, in the case of a securities exchange offer only, of the offeror) during the period beginning 12 months prior to the commencement of the offer period and ending with the latest practicable date prior to the date on which the offer document is sent, the details, including numbers of securities, dates and prices of such dealings shall be stated in the offer document in accordance with the applicable provisions of Rule 8.6. If no such dealings have taken place, that fact shall be stated.

(d) In the case of a director of the offeror, the disclosure shall include all interests and short positions of any other person whose interests in the shares of the offeror would be treated as interests of that director under Chapter 5 of Part V of the Companies Act 2014.

#### **24.5 DIRECTORS' EMOLUMENTS**

The offer document shall state (in the case of a securities exchange offer only) whether and in what manner the emoluments of the directors of the offeror and of any holding company of the offeror will be affected by the acquisition of the offeree or by any other associated transaction. If there will be no effect, this shall be stated.

#### **24.6 SPECIAL ARRANGEMENTS**

Except with the consent of the Panel, the offer document shall contain a statement as to whether or not any agreement, arrangement or

understanding (including any compensation arrangement) having any connection with or dependence upon the offer exists between the offeror or any person acting in concert with it and any of the directors or recent directors of the offeree or any of the holders or recent holders of, or any persons interested or recently interested in, relevant securities of the offeree, and shall contain full particulars of any such agreement, arrangement or understanding. For the purposes of Rule 24.6, “recent” and “recently” refer to the period since the date 12 months prior to the commencement of the offer period.

#### **24.7 INCORPORATION OF OBLIGATIONS AND RIGHTS**

The offer document shall state the time allowed for acceptance of the offer and any alternative offer and shall incorporate language that appropriately reflects Rules 10.3 to 10.6 and those parts of Rules 13.3(a), 13.3(c) (if applicable), 17 and 31 to 34 (excluding Rule 31.6(b)) that impose timing obligations or confer rights or impose restrictions on offerors, offerees or shareholders of offerees.

#### **24.8 CASH CONFIRMATION**

If the consideration under the offer is cash or includes an element of cash, the offer document shall include confirmation by an appropriate third party (including, inter alia, the offeror’s bank or financial adviser) that resources are available to the offeror sufficient to satisfy full acceptance of the offer. If such confirmation proves to be inaccurate, the Panel may direct the person who gave such confirmation to provide the necessary resources unless the Panel is satisfied that, in giving the confirmation, that person acted responsibly and took all reasonable steps to assure itself that the cash was available and would continue to be available at all relevant times.

#### **24.9 ULTIMATE OWNER OF SECURITIES ACQUIRED**

Unless otherwise agreed by the Panel, the offer document shall contain a statement as to whether or not any securities acquired in pursuance of the offer will be transferred to any other person in accordance with any agreement, arrangement or understanding, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all interests in the relevant securities of the offeree held by such persons, or a statement that no such interests are held.

#### **24.10 LISTING CONDITIONS**

If securities are included in the consideration under an offer and the offeror intends to obtain a quotation for them on a recognised market, the relevant quotation condition of the offer shall, except with the consent of the Panel, be in terms which ensure that it is capable

of being satisfied only when all steps required for the granting of the quotation have been taken, subject only to announcement by the appropriate authority in that recognised market of its decision to grant that quotation or (as appropriate) to official notice of issuance by that appropriate authority.

#### **24.11 ESTIMATED VALUE OF UNQUOTED PAPER CONSIDERATION**

If the consideration under an offer includes the issue of unquoted securities, the offer document and any subsequent circular from the offeror shall contain an estimate of the value of such securities by an appropriate adviser.

#### **24.12 NO SET-OFF OF CONSIDERATION**

The offer document shall contain a statement to the effect that, except with the consent of the Panel, settlement of the consideration to which any shareholder is entitled under the offer will be implemented in full in accordance with the terms of the offer without regard to any lien, right of set-off, counterclaim or other analogous right to which the offeror may be, or claim to be, entitled against such shareholder.

#### **24.13 ARRANGEMENTS IN RELATION TO DEALINGS**

The offer document shall disclose any arrangement to which Rule 8.7 applies which exists between the offeror, or any person acting in concert with the offeror, and any other person; if there are no such arrangements, this shall be stated.

#### **24.14 CASH UNDERWRITTEN ALTERNATIVE OFFERS**

The procedure for acceptance of a cash underwritten alternative offer which is capable of being shut off in accordance with Rule 33.2 shall be prominently stated in the relevant documents and acceptance forms. The offer document, the acceptance form and any subsequent documents shall make clear whether shareholders must lodge or submit their certificates or other documents, identification numbers or codes evidencing title (if any) by the closing date of the cash underwritten alternative offer, in addition to their completed acceptance forms, in order to receive cash.

#### **24.15 INCORPORATION OF INFORMATION BY REFERENCE**

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

- (i) Rules 24.3(a)(i) and (iii); and
- (ii) Rule 24.3(c), in so far as it refers to Rule 24.3(a)(i) and (iii).

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

- (i) in a form that may be printed, read and retained by the person to whom the document is required to be sent; and
- (ii) in a “read-only” format so that it may not be amended or altered in any way.

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

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

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

#### **24.16 DIVIDENDS**

(a) It must be a term of the offer that the offeror has the right to reduce the offer consideration by the amount of any dividend (or other distribution) which is paid or becomes payable by the offeree to offeree shareholders, unless, and to the extent that, offeree shareholders are entitled under the terms of the offer to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.



## 7.14

**(b) It must also be a term of the offer that, if the offeror exercises the right to reduce the offer consideration by all or part of the amount of a dividend (or other distribution) that has not been paid, offeree shareholders will be entitled to receive and retain that dividend (or other distribution).**

## RULE 25. OFFEREE BOARD CIRCULARS

### 25.1 THE FIRST RESPONSE CIRCULAR

(a) Except with the consent of the Panel, the offeree board shall advise the shareholders of the offeree of its opinion on the offer in a circular (the **“first response circular”**) which it shall send to those shareholders within 14 days after the date on which the offer document is sent.

(b) The offeree board shall append to the first response circular a separate opinion from the representatives of its employees on the effects of the offer on employment, provided such opinion is received in good time before the sending of that circular. Where any such opinion is received during the course of the offer but not in good time before the sending of the response circular, the offeree shall promptly publish the opinion on a website and announce to a Regulatory Information Service that it has been so published.

(c) Simultaneously with the sending of the first response circular under paragraph (a), the offeree shall make the circular readily available to the offeree’s employee representatives or, where there are no such representatives, to the employees themselves.

### 25.2 OPINION OF THE OFFEREE BOARD

(a) The offeree board shall include in the first response circular:

- (i) its opinion on the offer (including any alternative offers);
- (ii) the substance and source of the advice given to it by the independent adviser appointed pursuant to Rule 3.1; and
- (iii) the other information specified in Rule 25.

(b) If the offeree board is split in its opinion on an offer, the directors who are in a minority shall also publish their opinion. Except with the consent of the Panel, the offeree shall be obliged to send the opinion of such directors to shareholders of the offeree.

(c) If a director of the offeree has a conflict of interest, he or she shall not be joined with the remainder of the offeree board in the expression of its opinion on the offer, and the nature of the conflict shall be clearly explained in any document sent by the offeree board to shareholders.

### 25.3 VIEWS OF THE OFFEREE BOARD ON THE OFFEROR’S PLANS FOR THE OFFEREE AND ITS EMPLOYEES

The opinion referred to in Rule 25.2(a)(i) shall include the views of the offeree board on:

- (a) the effects of implementation of the offer on all the offeree's interests including, specifically, employment; and
- (b) the offeror's strategic plans for the offeree and their likely repercussions on employment and on the locations of the offeree's places of business, as set out in the offer document pursuant to Rule 24.2;

and shall state the offeree board's reasons for forming its opinion.

#### 25.4 INTERESTS AND DEALINGS IN RELEVANT SECURITIES

- (a) The first response circular (whether recommending acceptance or rejection of the offer) shall state:
  - (i) details of all relevant securities of the offeror in which the offeree or any of the directors of the offeree is interested, in each case specifying the nature of the interests concerned in accordance with the applicable provisions of Rule 8.6; and details of all short positions of each such interested person in any class of relevant securities of the offeror in accordance with the applicable provisions of that Rule;
  - (ii) the same details as in subparagraph (i) above, in respect of relevant securities of the offeree, in relation to each of:
    - (1) the directors of the offeree;
    - (2) any other person who is acting in concert with the offeree; and
    - (3) any person who has an arrangement to which Rule 8.7 applies with the offeree or with any person who is acting in concert with the offeree;
  - (iii) in the case of a securities exchange offer, the same details as in subparagraph (i) above in respect of any relevant securities of the offeror in relation to each of the persons listed in subparagraph (ii)(2) and (3);
  - (iv) the amount of relevant securities of the offeree which the offeree has redeemed or purchased during the period beginning 12 months prior to the commencement of the offer period and ending on the latest practicable date prior to the date on which the circular is sent, together with details of any such redemption or purchase, including dates and prices; and
  - (v) whether the directors of the offeree intend, in respect of their own beneficial holdings of securities, to accept or reject the offer.
- (b) If in the case of any of the persons referred to in paragraph (a) (i) or (ii) there are no interests in relevant securities or short positions

to be disclosed, that fact shall be stated in the circular. This shall not apply in the case of paragraph (a)(ii)(3) if no arrangements of the kind referred to in that paragraph exist.

(c) (i) If any person referred to in paragraph (a)(i) has dealt in any relevant securities of the offeree or the offeror between the commencement of the offer period and the latest practicable date prior to the date on which the circular is sent, the details, including numbers of securities, dates and prices, shall be stated in the circular in accordance with the applicable provisions of Rule 8.6.

(ii) If any person referred to in paragraph (a)(ii)(2) and (3) has dealt in any relevant securities of the offeree or (in the case of a securities exchange offer only) of the offeror during the period beginning with the commencement of the offer period and ending with the latest practicable date prior to the sending of the circular, similar details shall be stated in the circular.

(iii) In all cases, if no such dealings have taken place, that fact shall be stated in the circular.

(d) If, as part of the arrangements leading to an offer being made, some or all of the directors of the offeree resign, Rule 25.4 shall apply to them, and their interests in relevant securities and dealings shall be disclosed, in the circular as if they had remained directors.

(e) In the case of a director of the offeree, the disclosure shall include all interests and short positions of any other person whose interests in the shares of the offeree would be treated as interests of that director under Chapter 5 of Part V of the Companies Act 2014.

## 25.5 DIRECTORS' SERVICE CONTRACTS

(a) The first response circular (whether recommending acceptance or rejection of the offer) shall contain particulars of all service contracts of any director or proposed director of the offeree with the offeree or any of its subsidiaries or associated companies. If there are none, this shall be stated in the circular.

(b) If any such contract has been entered into or amended within 6 months prior to the date of the circular, particulars shall be given in the circular in respect of the earlier contracts (if any) which have been replaced or amended as well as in respect of the current contract. If there has been no such earlier contract, this shall be stated in the circular.

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

- (i) the name of the director under contract;
  - (ii) the date of the contract, the unexpired term and details of any notice periods;
  - (iii) the amount of fixed remuneration payable under the contract (irrespective of whether received as a director or for management);
  - (iv) the amount of any variable remuneration payable under the contract (including, inter alia, commission on profits) with details of the basis for calculating such remuneration;
  - (v) arrangements for company payments in respect of a pension or similar scheme; and
  - (vi) any provision for compensation upon early termination of the contract.
- (d) An increase in the remuneration of a director of an offeree made within 6 months prior to the date of the circular shall be treated as an amendment of a service contract for the purposes of Rule 25.5.

#### 25.6 FINANCIAL INFORMATION ON THE OFFEREE

- (a) The offeree board shall include in the first response circular a statement of all known material changes in its financial or trading position which have occurred since the end of the last financial period for which audited accounts, a preliminary statement of annual results, a half-yearly financial report or interim financial information has been published or a statement that there are no known material changes.
- (b) Where the first response circular is combined with the offer document, the offeror shall not be required to comply with Rule 24.3(c) insofar as it relates to Rule 24.3(a)(ii).

#### 25.7 OTHER INFORMATION

The first response circular shall set out:

- (a) any arrangement to which Rule 8.7 applies which exists between the offeree, or any person who is acting in concert with the offeree, and any other person; if there is no such arrangement, this shall be stated in the circular;
- (b) a summary of the principal contents of each material contract (not being a contract entered into in the ordinary course of business) entered into by the offeree or any of its subsidiaries since the date two years before the commencement of the offer period, including particulars of dates, parties, terms and conditions and any consideration passing to or from the offeree or any of its subsidiaries;

- (c) the information required under Rule 2.9(a) in respect of any irrevocable commitment or letter of intent which the offeree or any person acting in concert with it has procured in relation to relevant securities of the offeree or, if appropriate, the offeror;
- (d) a list of the documents which the offeree has published on a website in accordance with Rules 26.2 and 26.3 and the address of the website on which the documents are published; and
- (e) any profit forecast or quantified financial benefits statement, and any related reports or confirmations, required by Rule 28.

**RULE 26. DOCUMENTS TO BE PUBLISHED ON A WEBSITE****26.1 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION TO BE PUBLISHED ON A WEBSITE DURING THE COURSE OF AN OFFER**

The following documents, announcements and information must be published on a website by the offeror or offeree, as relevant, promptly following the publication of the relevant document, announcement or information and in any event by no later than 12 noon on the following business day:

- (i) any document or information in relation to an offer sent to offeree shareholders in accordance with Rule 30.2;
- (ii) any offer or proposal sent to holders of convertible securities of the offeree in accordance with Rule 15;
- (iii) any announcement (other than an announcement referred to in Rule 26.4(a) below) published via a RIS (whether related to the offer or not);
- (iv) any document or information required to be published on a website under any provision of the Rules (other than Rules 26.2 or 26.3);
- (v) any presentation or other document relating to an offer or a party to an offer provided to, or used in any meeting referred to in Rule 20.2 including any telephone call or meeting held by electronic means (if there are different versions of a presentation or other document, only the latest version provided that it does not omit any relevant information or opinion which was included in a previous version);
- (vi) any article, letter or other written communication relating to an offer or the financial performance of a party to an offer provided to the media by or on behalf of an offeror or the offeree and published by the media;
- (vii) any presentation or other document relating to an offer or a party to an offer provided to, or used in any meeting including any telephone call or meeting held by electronic means with any holder of publicly-traded debt securities of an offeror or offeree acting in its capacity as such; and
- (viii) such other documents as the Panel may require to be published on a website in the circumstances of a particular case.

## **26.2 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING AN ANNOUNCEMENT OF “A FIRM ANNOUNCEMENT”**

The following documents shall be published on a website promptly following the publication of the announcement of a firm intention to make an offer (or, if later, the date of the relevant document) and in any event by no later than 12 noon on the following business day:

- (i) any document evidencing an irrevocable commitment or letter of intent procured by the offeror or offeree (as appropriate) or any person acting in concert with it;
- (ii) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Rule 8.7(a);
- (iii) if the Panel has given consent to the offeree board to enter into a contract or arrangement of the kind described in Rule 21.2, a copy of the contract or arrangement; and
- (iv) any agreements or arrangements, or, if not reduced to writing, a memorandum of all the terms of such agreements or arrangements, which relate to the circumstances in which the offeror may or may not invoke or seek to invoke a pre-condition or a condition to its offer pursuant to Rule 2.7(b)(vi).

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

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

- (i) the memorandum and articles of association of the offeror or the offeree, as appropriate, or equivalent documents;
- (ii) every report, letter, valuation or other document, any part of which is exhibited or referred to in any document issued by or on behalf of the offeror or the offeree, as appropriate, other than the service contracts of the offeree directors and any material contracts that are not entered into in connection with the offer;
- (iii) written consents of advisers (as required by Rule 23.2(a));
- (iv) all material contracts entered into by the offeror or the offeree, or any of their respective subsidiaries, in connection with the offer (as required by Rules 24.3(a)(vi) and 25.7(b));
- (v) in the case of the offeror, any documents relating to the financing of the offer referred to in Rule 24.3(d);



(vi) where a profit forecast or quantified financial benefits statement has been published:

(1) the reports of the reporting accountants and of the financial advisers (as required by Rule 28);

(2) the letters giving the consent of the reporting accountants and of the financial advisers to the issue of the relevant document with the report in the form and context in which it is included (as required by Rule 23.2(b)) or, if appropriate, the confirmations that their reports continue to apply (as required by Rule 27.2);

(vii) if an asset valuation has been made:

(1) the valuation report (as required by Rule 29.3);

(2) a letter stating that the valuer has given and not withdrawn its consent to the publication of the valuation report in the relevant document (as required by Rule 23.2(c));

(3) if appropriate, the confirmation by the valuer that an updated valuation would not be materially different (as required by Rules 29.5 and 27.2);

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

(ix) all derivative contracts which in whole or in part have been disclosed under Rule 24.4(a) or (c) or Rule 25.4(a) or (c) or in accordance with Rule 8.1. Documents in respect of the last mentioned shall be published on a website from the time the offer document or, as appropriate, the first response circular is published or from the time of disclosure, whichever is the later.

#### 26.4 WEBSITES

(a) Copies of the following announcements in relation to notifications made pursuant to the rules of other regulatory regimes and, in the case of subparagraph (iv) below, these Rules are not required to be published on a website:

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

(ii) the acquisition or disposal of major shareholdings;

(iii) disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares in issue (including treasury shares); and

(iv) announcements of the number of relevant securities in issue under Rule 2.12.

(b) Copies of all documents, announcements and information required to be published on a website under Rule 26 shall continue to be made available on a website free of charge during the course of the offer.

(c) All documents, announcements and information published in relation to an offer by an offeror or the offeree in the manner described in Rule 26.1 above shall contain a statement providing details of the website on which a copy will be published and a clear link to the relevant webpage.

(d) An offeror and the offeree shall each use its own website when publishing copies of documents, announcements and information in accordance with Rule 26. If an offeror or the offeree does not have its own website, or proposes to use a website maintained by a third party for that purpose, it shall consult the Panel.

(e) All documents, announcements and information published on a website in accordance with Rule 26 shall be published in a “read-only” format so that they may not be amended or altered in any way.

(f) Except as provided in Rule 26.1(v), if a document is amended, varied, updated or replaced during the period in which it is required to be published on a website under Rule 26, the amended, varied or updated document, or the replacement document, must also be published on a website and an announcement made explaining that this has been done. Similarly, where a new document is entered into which is required to be published on a website under Rule 26, an announcement must be made explaining that the document has been entered into and that it has been so published.

**RULE 27. MATERIAL CHANGES AND SUBSEQUENT DOCUMENTS****27.1 MATERIAL CHANGES**

(a) Except with the consent of the Panel, following the publication of the initial offer document or offeree response circular (as appropriate) and until the end of the offer period, the offeror or the offeree (as appropriate) must promptly announce:

(i) any changes in information disclosed in any document or announcement published by it in connection with the offer which are material in the context of that document or announcement; and

(ii) 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.

(b) Where an announcement is required to be made under Rule 27.1(a), the Panel may, in addition, require a document setting out the relevant information to be sent to the shareholders of the offeree.

(c) If, following the publication of the initial offer document or offeree response circular (as appropriate) and before the end of the offer period, an offeror or the offeree publishes any subsequent document in connection with the offer, that document shall contain details of any changes in information disclosed in any previous document published by it in connection with the offer which are material in the context of that document (or a statement that there have been no such material changes). Without prejudice to the generality of that requirement, information previously published in relation to the following matters shall be updated in any document published by the offeror or (as the case may be) the offeree:

(i) the offeree board's opinion on the offer and the other matters as referred to in 25.2;

(ii) intentions with regard to the matters referred to in Rule 24.2;

(iii) the terms of the offer;

(iv) changes or additions to material contracts (as referred to in Rules 24.3(a)(vi) and 25.7(b));

(v) all known material changes in the financial or trading position (as referred to in Rules 24.3(a)(ii) and 25.6(a));

(vi) irrevocable commitments and letters of intent (as referred to in Rule 24.3(b)(xvii) and Rule 25.7(c));

- (vii) any inducement fees permitted under Rule 21;
- (viii) profit forecasts and quantified financial benefits statements (as referred to in Rules 24.3(b)(xix) and 25.7(e));
- (ix) financing arrangements (as referred to in Rule 24.3(d));
- (x) interests in relevant securities and dealings (as referred to in Rules 24.4 and 25.4);
- (xi) directors' emoluments (as referred to in Rule 24.5);
- (xii) special arrangements (as referred to in Rule 24.6);
- (xiii) ultimate owner of shares acquired under the offer (as referred to in Rule 24.9);
- (xiv) arrangements in relation to dealings (as referred to in Rules 24.13 and 25.7(a)); and
- (xv) changes to directors' service contracts (as referred to in Rules 25.5 and 40.2(c)).

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

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

- (i) that the profit forecast, quantified financial benefits statement or asset valuation (as appropriate) remains valid;
- (ii) where reports were obtained on a profit forecast or quantified financial benefits statement, that the reporting accountants and financial adviser(s) have confirmed that their reports continue to apply; and
- (iii) where a valuation report was obtained on an asset valuation, that the valuer has confirmed that an updated valuation would not be materially different.

**PART B - SECTION 8.****FORECASTS, QUANTIFIED FINANCIAL BENEFITS  
STATEMENTS AND VALUATIONS**

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**RULE 28. PROFIT FORECASTS AND QUANTIFIED FINANCIAL  
BENEFITS STATEMENTS**

**28.1 REQUIREMENTS FOR PROFIT FORECASTS AND QUANTIFIED  
FINANCIAL BENEFITS STATEMENTS**

(a) Except with the consent of the Panel, if during an offer period (or in an announcement which commences an offer period) the offeree or a securities exchange offeror publishes a profit forecast for a financial period ending 15 months or less from the date on which it is, or was, first published or publishes a quantified financial benefits statement, the document or announcement in which the forecast or statement is first published shall include:

(i) a report from its reporting accountants stating that, in their opinion, the forecast or statement has been properly compiled on the basis stated and (in the case of a profit forecast only) that the basis of accounting used is consistent with the company's accounting policies; and

(ii) a report from its financial adviser(s) stating that, in its (or their) opinion, the forecast or statement has been prepared with due care and diligence.

(b) Except with the consent of the Panel and subject to Rule 28.1(d), if the offeree or a securities exchange offeror published a profit forecast for a financial period ending 15 months or less from the date on which it is, or was, first published before the offer period commenced but after it received or made an approach with regard to a possible offer, the profit forecast shall be repeated in the offer document or first response circular (as appropriate) and that document (or, where any earlier document or announcement published during the offer period refers to that profit forecast, that document or announcement) shall also include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

(c) Except with the consent of the Panel and subject to Rule 28.1(e), if the offeree or a securities exchange offeror published a profit forecast of relevance to the offer for a financial period ending 15 months or less from the date on which it is, or was, first published before it received or made an approach with regard to a possible offer, the offer document or first response circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, shall:

(i) repeat the profit forecast and include a statement by the directors that it remains valid and confirmations by the directors that the profit forecast has been properly compiled

on the basis of the assumptions stated and that the basis of accounting used is consistent with the company's accounting policies; or

(ii) include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case; or

(iii) include a new profit forecast for the relevant period and the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

(d) Subject to Rule 28.1(e), if the offeree or a securities exchange offeror published an ordinary course profit forecast for a financial period ending 15 months or less from the date on which it is, or was, first published before the offer period commenced but after it received or made an approach with regard to a possible offer, the requirements in Rule 28.1(b) shall not apply and the offer document or first response circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, shall satisfy the requirements of Rule 28.1(c)(i), (ii) or (iii) (as appropriate).

(e) Rule 28.1(d) 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 or group of controllers. In the case of a management buy-out or an offer being made by a person who controls, or who, together with persons acting in concert, controls, the offeree, where a profit forecast for a financial period ending 15 months or less from the date on which it is, or was, first published 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)(i) and (ii).

(f) A profit forecast or a quantified financial benefits statement published on behalf of a securities exchange offeror or an offeree shall be deemed to be a profit forecast or a quantified financial benefits statement to which Rule 28 applies.

(g) With the consent of the Panel, Rule 28 shall not apply to a profit forecast or a quantified financial benefits statement published by or on behalf of an offeror where the consideration under the offer consists entirely of either a non-convertible debt instrument or a combination of cash and a non-convertible debt instrument.

(h) 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 a securities exchange 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.

(i) Rule 28 shall apply to any profit forecast in respect of a company which controls a securities exchange offeror, as if such company were the offeror.

## 28.2 LONG TERM PROFIT FORECASTS

(a) Except with the consent of the Panel, if, during an offer period (or in an announcement which commences an offer period), the offeree or a securities exchange offeror publishes a profit forecast for a financial period ending more than 15 months from the date on which it is, or was, first published, the document or announcement in which the profit forecast is first published shall include a statement by the directors that it remains valid and confirmations by the directors that the profit forecast has been properly compiled on the basis of the assumptions stated and that the basis of accounting used is consistent with the company's accounting policies.

(b) Except with the consent of the Panel, if the offeree or a securities exchange offeror published a profit forecast for a financial period ending more than 15 months from the date on which it is, or was, first published before the offer period commenced but after it received or made an approach with regard to a possible offer, the profit forecast shall be repeated in the offer document or first response circular (as appropriate) and that document (or, where any earlier document or announcement published during the offer period refers to that profit forecast, that document or announcement) shall also include a statement by the directors that it remains valid and confirmations by the directors that the profit forecast has been properly compiled on the basis of the assumptions stated and that the basis of accounting used is consistent with the company's accounting policies.

(c) Except with the consent of the Panel, if, before it received or made an approach with regard to a possible offer, the offeree or a securities exchange offeror published a profit forecast of relevance to the offer for a financial period ending more than 15 months from the date on which it is, or was, first published, the offer document or first response circular (as appropriate), or any earlier document or



announcement published during the offer period in which the profit forecast is referred to, shall:

- (i) repeat the profit forecast and include a statement by the directors that it remains valid and confirmations by the directors that the profit forecast has been properly compiled on the basis of the assumptions stated and that the basis of accounting used is consistent with the company's accounting policies; or
  - (ii) include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case; or
  - (iii) include a new profit forecast for the relevant period and include the directors' confirmations referred to in paragraph (i) above.
- (d) Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), the offeree or a securities exchange 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 COMPILATION OF PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

- (a) Any profit forecast or quantified financial benefits statement shall be properly compiled and shall be prepared with due care and diligence. The profit forecast or quantified financial benefits statement, and the principal assumptions on which it is based, are the responsibility of the relevant party to the offer and its directors.
- (b) A profit forecast (and the assumptions stated) or a quantified financial benefits statement (and the details included in accordance with Rule 28.6) shall be:
- (i) understandable: it shall not be so complex or include such extensive disclosure that it cannot be readily understood;
  - (ii) reliable: it shall be supported by a thorough analysis of the offeree's and/or the offeror's business and shall represent factual and not hypothetical strategies, plans and risk analysis; and
  - (iii) comparable (in the case of a profit forecast only): it should be capable of justification by comparison with outcomes in the form of historical financial information.

(c) A forecast of profit before tax should disclose separately any non-recurrent items and tax charges if they are expected to be abnormally high or low.

#### **28.4 ASSUMPTIONS AND BASES OF BELIEF**

(a) When a profit forecast is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement shall include the principal assumptions on which the profit forecast is based.

(b) The assumptions included for a profit forecast or bases of belief included for a quantified financial benefits statement should provide useful information as to its reasonableness and reliability. They shall:

- (i) be readily understandable;
- (ii) be specific and precise; and
- (iii) not relate to the general accuracy of the estimates underlying the profit forecast or the quantified financial benefits statement.

(c) There shall be a clear distinction between assumptions or bases of belief about factors which the directors (or other members of the company's management) can influence and those which they cannot influence.

#### **28.5 PROFIT ESTIMATES**

Rule 28.1 does not apply to a profit estimate included in:

- (a) a preliminary statement of annual results which complies with the requirements in respect of preliminary profits statements of each recognised market on which securities of the company concerned are quoted;
- (b) a statement of interim results which complies with the requirements in respect of interim reports of each recognised market on which securities of the company concerned are quoted; or
- (c) an interim management statement which has been prepared in accordance with the reporting framework set out in International Accounting Standard 34.

## **28.6 DISCLOSURE REQUIREMENTS FOR QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

When a quantified financial benefits statement is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement shall include:

- (a) the bases of belief supporting the statement (identifying the principal assumptions and sources of information);
- (b) an analysis, explanation and quantification of the constituent elements sufficient to enable the context and relative importance of those elements to be understood;
- (c) a base figure where any comparison is made with historical financial performance or with existing cost bases and structures;
- (d) details of any disbenefits expected to arise;
- (e) in the case of a statement falling under paragraph (i) of the definition of a “quantified financial benefits statement”, a statement that the expected financial benefits will accrue as a direct result of the success of the offer and could not be achieved independently of the offer;
- (f) an indication of when the financial benefits are expected to be realised;
- (g) an indication of whether the expected financial benefits will be recurring, clearly identifying any non-recurring benefit(s); and
- (h) the recurring and non-recurring costs of realising the expected financial benefits.

## **28.7 PUBLICATION OF INVESTMENT ANALYSTS' FORECASTS ON WEBSITES**

(a) Except with the consent of the Panel, where, during the offer period, the offeree or a securities exchange offeror publishes on its website profit forecasts relating to it that are derived from investment analysts' forecasts, the forecasts on the website shall be based on all forecasts provided by investment analysts who have published such forecasts, excluding:

- (i) any forecasts which pre-date the publication of the company's latest preliminary statement of annual results or half-yearly financial report (as appropriate); and
- (ii) any forecasts by investment analysts whose employer is controlled by, controls or is under the same control as any party to the offer or a connected adviser to any party to the offer.

(b) Except with the consent of the Panel, the following requirements shall be complied with (failing which, all investment analysts' forecasts shall be removed from the website upon the commencement of the offer period):

(i) for each line in respect of which forecasts are published on the website, the highest and lowest figures forecast by any investment analyst shall be stated, together with the arithmetic mean of all investment analysts' forecasts (a "**consensus forecast**");

(ii) the name of each organisation whose forecasts have been included in the calculation of the consensus forecast, and the dates of the forecasts, shall be stated;

(iii) if any analyst's forecast has been excluded from the calculation of the consensus forecast, the name of the organisation, the date of the forecast and the reason for its exclusion, shall be stated;

(iv) during the offer period, the relevant section of the website shall be kept up-to-date by including any new forecasts promptly after their publication and promptly excluding any forecasts which pre-date the publication of the latest preliminary statement of annual results or half-yearly financial report; and

(v) it shall be prominently stated that the investment analysts' forecasts are not endorsed by the company and that they have not been reviewed or reported on in accordance with the requirements of Rule 28.1(a) or Rule 28.2(a) as appropriate.

## 28.8 REFERENCES TO CONSENSUS FORECASTS RELATING TO ANOTHER PARTY TO THE OFFER

(a) Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), a party to the offer ("**party A**") wishes to refer to investment analysts' forecasts relating to any other party to the offer ("**party B**"), party A shall refer to either:

(i) a consensus forecast (see Rule 28.7(b)) published on party B's website in accordance with the requirements of Rule 28.7; or

(ii) if no such consensus forecast has been published on party B's website, a consensus forecast compiled by party A in accordance with the requirements of Rule 28.7.

(b) Where party A has referred to a consensus forecast relating to party B, any subsequent reference to that consensus forecast by party B will not be subject to Rule 28.1(a) or Rule 28.2(a) as appropriate, provided that party B does not endorse the consensus forecast.

(c) Any document or announcement which includes a reference by party A to a consensus forecast relating to party B shall make clear whether or not the reference is being made with the agreement or approval of party B. Where the consensus forecast is referred to in any document or announcement which is published by party A with the agreement or approval of party B, or at a time when the offer is a recommended offer, the consensus forecast will be treated as having been endorsed and published by party B and Rule 28.1(a) or Rule 28.2(a) as appropriate will therefore apply.

(d) Where party B has published consensus forecasts on its website in accordance with Rule 28.7, and party A wishes to refer to those consensus forecasts in accordance with Rule 28.8, the source data used by party B to compile the consensus forecasts shall, on request, promptly be made available to party A.

**RULE 29. ASSET VALUATIONS****29.1 VALUATIONS TO BE REPORTED ON IF GIVEN IN CONNECTION WITH AN OFFER**

(a) Subject to paragraph (b) or except with the consent of the Panel, no valuation of any assets shall be given by or on behalf of an offeror or an offeree during the offer period in connection with an offer or contemplated offer unless it is in the form of, or accompanied by, a valuation report of a named independent valuer. The following provisions of Rule 29 shall apply to any such valuation and valuer.

(b) Rule 29 shall not apply to a valuation of its own assets given by or on behalf of an offeror whose offer is not a securities exchange offer.

(c) Rule 29 applies not only to valuations of land, buildings, plant and machinery but also to valuations of any other assets. Where a valuation of any such other assets is to be given, the offeror or (as the case may be) the offeree shall consult the Panel in advance.

(d) If an offer document or offeree board circular includes a statement of assets which reproduces a directors' estimate of asset values published with the accounts of the company concerned, such estimate shall not be deemed to be given in connection with an offer unless asset values are a significant factor in the assessment of the offer or the estimate is given more prominence in the offer document or offeree board circular than merely being referred to in a note to a statement of assets in an appendix.

**29.2 THE VALUER**

A valuer shall:

- (i) be independent of the parties to the offer;
- (ii) be appropriately qualified to give a valuation report on the valuation; and
- (iii) have sufficient current knowledge of each relevant market and the necessary skills and understanding to prepare the valuation report.

The Panel shall be consulted in advance if there is any doubt as to whether a valuer satisfies the requirements of this Rule 29.2.

**29.3 THE VALUATION REPORT**

- (a) A valuation report shall include:
- (i) the name, address and professional qualifications of the valuer;
  - (ii) the date as at which the assets were valued;
  - (iii) details of the assets which are the subject of the valuation report;
  - (iv) separate valuations of each category of assets, and/or individual significant assets, consistent with any previously published valuations of those assets or with normal valuation reporting practice for such assets;
  - (v) details of the valuation standards to which the valuation report has been prepared;
  - (vi) the basis of valuation; and
  - (vii) all assumptions to which the valuation is subject which assumptions shall be fully explained.
- (b) Except where the Panel consents otherwise, the valuation report shall not be:
- (i) qualified; or
  - (ii) subject to any special assumptions or assumptions which might be inconsistent with the established and professional valuation practices in the relevant jurisdiction.
- (c) A valuation report shall be prepared in accordance with:
- (i) in the case of valuations of land, buildings or plant and machinery, the valuation practices and standards prescribed by The Society of Chartered Surveyors where applicable; or
  - (ii) other appropriate professional standards approved by the Panel,
- and on a basis which is consistent with past practice in relation to the assets concerned.
- (d) The basis of valuation shall be clearly stated in the valuation and should normally be market value or (in the case of land or properties) open market value.

(e) In the case of land or properties currently being developed or with immediate development potential, in addition to giving the open market value in the state existing at the date of valuation, the valuation shall include:

- (i) the value after the development has been completed;
- (ii) the value after the development has been completed and let;
- (iii) the estimated total cost, including carrying charges, of completing the development and the anticipated dates of completion and of letting or occupation; and
- (iv) a statement whether all necessary planning and other regulatory consents have been obtained and, if so, the dates thereof and the nature of any conditions attaching to such consents which may affect the value.

(f) If a property which is occupied for the purposes of the business of the offeror or (as the case may be) the offeree is valued at open market value for an alternative use, the directors of the company concerned shall estimate the costs of cessation and removal and show them in the document sent to shareholders.

(g) Any valuation report shall be published on a website in accordance with Rule 26.3.

#### **29.4 POTENTIAL TAX LIABILITY**

If a valuation is given in connection with an offer, the document sent to shareholders of the offeree shall include a statement regarding any potential tax liability (including an estimate of its amount) that would arise if the assets were to be sold at the amount of the valuation, accompanied by an appropriate comment as to the likelihood of any such liability crystallising.

#### **29.5 CURRENT VALUATION**

A valuation which is not current shall be updated unless the independent valuer states that a current valuation would not be materially different.



**PART B - SECTION 9.****MAKING OF ANNOUNCEMENTS AND  
DISTRIBUTION OF DOCUMENTATION, TIMING  
AND REVISION**

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## **RULE 30. MAKING OF ANNOUNCEMENTS AND DISTRIBUTION OF DOCUMENTATION**

### **30.1 ANNOUNCEMENTS TO BE PUBLISHED VIA A RIS**

(a) Except as otherwise provided by the Rules, every announcement made pursuant to the Rules shall be made to a Regulatory Information Service and the Panel by means of a notification delivered by electronic mail.

(b) Except with the consent of the Panel, the time at which an announcement shall for the purposes of the Rules be made shall be deemed to be the time of publication of such announcement by the Regulatory Information Service concerned.

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

### **30.2 METHOD OF PUBLICATION OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION**

(a) If a document, an announcement or any information is required to be sent to any person, it will be treated as having been sent for the purposes of the Rules if it is:

- (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.

(b) Acceptance forms, withdrawal forms, proxy cards and other forms connected with an offer must be published in hard copy form only and must not be published in newspapers.

### **30.3 RIGHT TO RECEIVE COPIES OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION IN HARD COPY FORM**

(a) If a document, an announcement or any information is required to be sent to any person and it is:

- (i) sent to a person in electronic form; or
- (ii) published on a website and the person entitled to receive it is sent a website notification,

that person may request a copy in hard copy form from the party which publishes it. Any such request must be made in accordance with the procedure specified in the document, announcement or information for the making of such requests and must provide an address to which the hard copy document, announcement or other information may be sent.

(b) A person entitled to receive a document, an announcement or any information may request that all future documents, announcements and information sent to that person in relation to an offer should be sent by the party which publishes it in hard copy form.

(c) If an offeror receives a request for copies of future documents, announcements and information sent to a person in connection with the offer to be sent in hard copy form, it must notify the offeree as soon as possible and provide details of the address to which hard copy documents, announcements and information should be sent. If the offeree receives a request for copies of future documents, announcements and information sent to a person in connection with the offer to be sent in hard copy form (either from the person concerned or from an offeror), it must provide the other parties to the offer with details of such requests at the same time as it provides them with updates to the company's register.

(d) If a request is made under (a) above for a hard copy of a document, an announcement or any information, the party which published it must ensure that it is sent to the relevant person as soon as possible and in any event within two business days of the request being received by that party.

(e) Any document, announcement or information that is sent to a person in electronic form or by means of being published on a website, and any related website notification, must contain a statement that the person to whom it is sent may request a copy of the document, announcement or information (and any information incorporated into it by reference to another source) in hard copy form and may also request that all future documents, announcements and information sent to that person in relation to the offer should be in hard copy form. Attention should be drawn to the fact that a hard copy of the document, announcement or information will not be sent to that person unless so requested and details must be provided of how a hard copy may be obtained (including an address in Ireland and a telephone number to which requests may be submitted).

(f) If a shareholder or other person is entitled to be sent a document, an announcement or any information and has elected in accordance with any applicable legal or regulatory provisions to receive communications from the offeree in hard copy form (and such

election has been made in respect of information generally and not only in respect of certain specific types of information), that election must be treated by each party to an offer as also applying to the form in which any document, announcement or information must be sent to that person in relation to the offer (see also Section 4 of Appendix 1). If a request is made under (b) above for copies of future documents, announcements and information to be sent in hard copy form, that request must be treated by each party to an offer as an election made in accordance with applicable legal or regulatory provisions to receive communications from the offeree in hard copy form.

#### **30.4 SENDING OR MAKING AVAILABLE DOCUMENTS OR INFORMATION**

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

- (i) the registered address of such holder being in a country or territory outside the EEA to which the transmission or delivery of the material is precluded by the laws of a Member State or of such country or territory;
- (ii) sent to only one of registered joint holders;
- (iii) a bona fide error in the registered address of such holder; or
- (iv) failure by postal or other carriers to effect delivery due to circumstances outside the control of the party obliged to send the relevant material;

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

(b) For the purposes of the Rules, the date of sending documents, announcements or information shall be construed to mean the time when the relevant material is passed by the sender into the control of the service provider concerned.

### 30.5 DISTRIBUTION AND AVAILABILITY OF DOCUMENTS AND ANNOUNCEMENTS

(a) Every person, being an offeror or the offeree or any person acting in concert with either of them, who during the course of an offer releases to shareholders of the offeree, to a Regulatory Information Service or to the media any offer document, offeree response circular or any other document or announcement of any kind bearing on the offer or contemplated offer (including, without limitation, announcements of annual or interim results of the offeror or offeree) or any advertisement or other material (including any notes to editors) shall, subject to the exception in paragraph (b) below, at the time of release furnish copies of such documents or other material in electronic form to the Panel and to the advisers to all other principals concerned with the offer or any competing offer. Such material shall not be released to the media under an embargo. If such material is released outside normal business hours, the person making the release shall inform such advisers of the release immediately, if necessary by telephone, and shall, if necessary, make special arrangements to ensure that copies of the material are sent directly to them and to the Panel.

(b) An offeror shall send in hard copy form and electronic form a copy of the offer document and any revised offer document to the Panel prior to releasing it pursuant to paragraph (a).

(c) Where any document is sent to the shareholders of a relevant company in connection with any waiver or derogation, which the Panel has granted or been requested to grant, of or from an obligation to make an offer under Rule 9 or Rule 37 for any class of shares in the company, the person by whom or on whose behalf the document is sent shall promptly send an electronic copy to the Panel.

(d) A person who sends a document bearing on an offer to the shareholders of the offeree shall make an immediate announcement to that effect to a Regulatory Information Service, which announcement, in the case of an offer document, a revised offer document, a first response circular or a response circular in relation to a revised offer, shall include the address of the website on which it will be published in accordance with Rule 26.

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

### 30.6 WEBSITE NOTIFICATIONS

- (a) A website notification must be prepared with the highest standards of care and accuracy in accordance with Rule 19.1 and must contain a directors' responsibility statement in accordance with Rule 19.2.
- (b) A website notification must contain a summary of the provisions of Rule 8.
- (c) The information in a website notification must 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. A website notification should not include a recommendation to take or not to take any action in relation to, or contain any view on the merits of, an offer except for a factual statement as to whether or not the offer is proceeding with the recommendation of the offeree board.
- (d) A party to an offer should not include anything other than acceptance forms, withdrawal forms, proxy cards and other forms connected with an offer in the same envelope as a website notification without the consent of the Panel.
- (e) A website notification must include the following information in relation to the document, announcement or information to which it relates:
- (i) details of the website on which the document, announcement or information is published;
  - (ii) a statement setting out the right of persons to whom the document, announcement or information is sent to receive a copy of the document, announcement or information (and any information incorporated into it by reference to another source) in hard copy form and drawing attention to the fact that such persons will not receive a hard copy unless they so request;
  - (iii) details of how a hard copy may be obtained (including an address in Ireland and a telephone number to which requests for hard copies may be made); and
  - (iv) a statement that the website notification is not a summary of the document, announcement or other information to which it relates and should not be regarded as a substitute for reading the document, announcement or information in full.

**RULE 31. TIMEFRAME OF THE OFFER****31.1 FIRST CLOSING DATE**

An offer shall initially be open for acceptance until not earlier than 1.00 p.m. on the 21st day following the date on which the offer document is sent.

**31.2 EXTENSIONS AND FURTHER CLOSING DATES**

(a) An announcement by an offeror of an extension of an offer (namely, an extension of the period during which the offer will remain open for acceptance) shall state the next closing date for acceptance or, if the offer is unconditional as to acceptances, either:

- (i) the date beyond which the offer will not be open for acceptance, in accordance with paragraph (b) or (c); or
- (ii) that the offer will remain open for acceptance until further notice.

(b) Where an offer has become unconditional as to acceptances, the date beyond which the offer will not be open for acceptance shall (subject to paragraph (c)) not be earlier than 3.00 p.m. on the 14th day following the latest of:

- (i) the date on which the offer would otherwise have expired;
- (ii) the date on which the offer becomes unconditional as to acceptances; and
- (iii) the date on which the offeror sends the notice prescribed by paragraph (d) specifying the date beyond which the offer will not be open for acceptance.

(c) Where an offer is stated to be unconditional as to acceptances in the offer document, paragraph (b) shall not apply, but the position shall be set out clearly and prominently in the offer document.

(d) Where:

- (i) an announcement is made under subparagraph (a)(i); or
- (ii) following an announcement under subparagraph (a)(ii), the offeror announces a date beyond which the offer will not be open for acceptance; or
- (iii) an offer will remain open for acceptance beyond the 70th day following the sending of the offer document,



the offeror shall send promptly (and, in the case of subparagraph (iii), before closing the offer) to offeree shareholders who at that time have not accepted the offer a notice specifying the date beyond which the offer will not be open for acceptance, such date not being less than 14 days after the date of sending of such notice.

### **31.3 NO OBLIGATION TO EXTEND**

An offeror shall not be obliged to extend an offer the acceptance condition of which has not been satisfied by the first or any subsequent closing date for acceptance except where the Panel, being of the opinion that, having regard to the General Principles, it is just and proper so to direct, directs the offeror to extend by a period specified by the Panel such closing date or any closing date previously so extended.

### **31.4 COMPETITIVE SITUATION**

(a) In a competitive situation, an offeror whose offer document has been sent earlier may, with the consent of the Panel, extend the timetable for its offer so that the 39th day (as defined in Rule 31.9), the last day on which the offer may be revised for the purposes of Rule 32.1, the 53<sup>rd</sup> day (as referred to in Rules 2.6(d) and (e)) and, subject to any relevant extension pursuant to Rule 31.3, the 60th day (as referred to in the definition of “final closing date”) in respect of that offer shall coincide with the corresponding dates of a later offer.

(b) Where:

(i) during the offer period relative to an offer which has been the subject of an announcement pursuant to Rule 2.7, an announcement of a firm intention to propose a competing takeover scheme in respect of the same relevant company is made pursuant to that rule; or

(ii) during the offer period relative to a takeover scheme which has been the subject of an announcement pursuant to Rule 2.7, an announcement of a firm intention to make a competing offer, or to propose a competing takeover scheme, in respect of the same relevant company is made pursuant to that rule,

the board of the relevant company concerned, the offeror and the acquirer or acquirers (as the case may be) shall forthwith consult the Panel which may make such rulings and give such directions in relation to the timetables applicable to the offer and the scheme or schemes (as the case may be) as it considers appropriate, having regard to the General Principles, for the purpose of ensuring that the shareholders of the relevant company shall be afforded an opportunity to consider the respective merits of the offer and the takeover scheme or schemes (as the case may be).

### 31.5 NO EXTENSION STATEMENTS

(a) Subject to paragraphs (b), (c) and (d), if an offeror includes in a document sent to shareholders of the offeree a statement in relation to the duration of the offer such as that the offer will not be extended beyond a specified date unless it is unconditional as to acceptances by such date (a “**no extension statement**”), or if a no extension statement is otherwise made by or on behalf of an offeror or any of its directors, officers or advisers, and not withdrawn immediately if incorrect, the offeror may not subsequently, except with the consent of the Panel, extend its offer beyond the specified date if it has not specifically reserved the right to do so in the no extension statement.

(b) Subject to paragraph (d), if a competitive situation arises after a no extension statement has been made, the offeror may choose not to be bound by such statement and shall be free to extend its offer, provided that:

(i) the offeror makes an announcement to that effect as soon as possible (and in any event within 4 business days after the day of the announcement of the relevant competing offer) and sends a notice to shareholders of the offeree at the earliest opportunity; and

(ii) any shareholders of the offeree who accepted the offer on or after the date of the no extension statement are given a right to withdraw their acceptances during the period of 8 days following the date on which the notice is sent to shareholders and such right is included appropriately and prominently in the notice.

(c) Subject to paragraph (d), the offeror may choose not to be bound by a no extension statement which would otherwise prevent it from making an increased or improved offer which is recommended for acceptance by the offeree board.

(d) An offeror may choose not to be bound by a no extension statement in any given circumstances only if it has, with the consent of the Panel, specifically reserved the right to do so in such circumstances at the time at which the statement was made and such circumstances subsequently arise; this shall apply whether or not the offer was recommended for acceptance by the offeree board at the outset. If the offeror makes such a reservation, the first document sent to shareholders of the offeree in which reference is made to the no extension statement shall contain prominent reference to such reservation and precise details of it; and any subsequent reference made by the offeror to the no extension statement shall be accompanied by a reference to the reservation or, at the least, to the relevant sections in the previous document which contained the details of the reservation.

(e) A no extension statement shall not be made subject to a reservation to set the statement aside which depends solely on subjective judgements by the offeror or its directors or is within their control.

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

#### **31.6 FINAL CLOSING DATE RULE (SATISFACTION OF ACCEPTANCE CONDITION, TIMING AND ANNOUNCEMENT)**

(a) (i) Except with the consent of the Panel, an offer (whether revised or not) shall lapse unless it has become unconditional as to acceptances by 5.00 p.m. on the final closing date.

(ii) Except with the consent of the Panel, for the purposes of the acceptance condition the offeror shall take into account only acceptances or other acquisitions of shares in respect of which all relevant documents, electronic messages, identification numbers or codes (as required by Rules 10.3 and 10.4) have been received by its receiving agent before the last time for acceptance set out in the offeror's relevant document or announcement, which time shall be no later than 1.00 p.m. on the final closing date.

(b) Except with the consent of the Panel, on the final closing date the offeror shall make an announcement by 5.00 p.m. as to whether the offer is unconditional as to acceptances or has lapsed. Such announcement shall include, so far as is practicable, the details required by Rule 17.1 but in any event shall include a statement as to the current position in the count of acceptances.

#### **31.7 TIME FOR SATISFACTION OF ALL OTHER CONDITIONS**

(a) Subject to paragraph (b), except with the consent of the Panel an offer shall lapse unless all conditions of the offer are satisfied by the 21st day after the first closing date for acceptance or after the date on which the offer becomes unconditional as to acceptances, whichever is the later.

(b) If an offer under Rule 9 or Rule 37 has become unconditional as to acceptances but remains subject to a condition under Rule 12(a) or any other condition permitted by the Panel under Rule 9.2 or Rule 37(d) which will be satisfied by the issue in the State or any other jurisdiction of any governmental or regulatory authorisation, consent, approval or clearance and if the Panel is of opinion that, having regard to the General Principles, it is just and proper so to direct, the Panel may, on any one or more occasions whilst that condition remains unsatisfied, direct the offeror to extend by a period specified by the Panel the period within which the offer shall become unconditional in all respects or lapse.

### 31.8 SETTLEMENT OF CONSIDERATION

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

- (a) the first closing date for acceptance of the offer;
- (b) the date on which the offer becomes unconditional in all respects; and
- (c) the date of receipt of that acceptance complete in all respects.

### 31.9 OFFEREE ANNOUNCEMENTS AFTER THE 39TH DAY

The offeree board shall not, except with the consent of the Panel, announce any material new information, including trading results, a profit forecast (including an ordinary course profit forecast), a dividend forecast, an asset valuation, a quantified financial benefits statement, a proposal for a dividend payment or for any material acquisition or disposal, during the period commencing on the day after the 39th day (the “**39th day**”) following the date of sending of the offer document and ending with the end of the offer period.

### 31.10 RETURN OF DOCUMENTS OF TITLE

If an offer lapses, the offeror shall ensure that all documents of title and other documents lodged with forms of acceptance are returned as soon as practicable (and in any event within 14 days after the lapsing of the offer), and the offeror’s receiving agent shall immediately give instructions for the release of securities held in escrow.

## RULE 32. REVISION OF AN OFFER

### 32.1 OFFER OPEN FOR 14 DAYS AFTER REVISION

(a) If an offer is revised, the offeror shall send to the shareholders of the offeree a revised offer document, drawn up in accordance with Rules 24 and 27. The offeror shall keep the offer open for acceptance for a period of at least 14 days following the date on which the revised offer document is sent. Accordingly, an offeror shall not send a revised offer document during the 14 days ending on the final closing date, nor shall an offeror place itself in a position in which it would be required to revise its offer during that period.

(b) Except with the consent of the Panel, in the case of a securities exchange offer, the offeror, after the date from which it is precluded from revising its offer and before the end of the offer period, shall not announce any material new information, including trading results, a profit forecast (including an ordinary course profit forecast), a dividend forecast, an asset valuation, a quantified financial benefits statement, or a proposal for a dividend payment or for any material acquisition or disposal, which will or might have the effect of increasing the value of the offer.

(c) In a competitive situation, each offeror shall consult the Panel before the last day on which its offer may be revised in accordance with paragraph (a) above or paragraph (b) of Rule 31.4, and the Panel, if it considers it just and proper to do so, shall prescribe a procedure for the announcement of any final revisions of the relevant offers, following which no party to any of the takeovers shall release or permit the release of any information relating to such revision other than in accordance with the procedure so prescribed by the Panel.

### 32.2 NO INCREASE STATEMENTS

(a) Subject to paragraphs (b), (c) and (d), if an offeror includes in a document sent to shareholders of the offeree a statement in relation to the value or type of consideration under the offer such as “the offer will not be further increased” or “our offer remains at xp per share and it will not be raised” (a “**no increase statement**”), or if a no increase statement is made by or on behalf of an offeror or its directors, officers or advisers and not withdrawn immediately if incorrect, the offeror shall not subsequently, except with the consent of the Panel, amend the terms of its offer in any way notwithstanding that the amendment would not result in an increase in the value of the offer (including, inter alia, the introduction of a securities exchange alternative offer with a lower value) if it has not specifically reserved the right to do so in the no increase statement. Except with the consent of the Panel, an offeror which has made a no increase statement shall not place itself in a position in which it would be required to revise its offer.

(b) Subject to paragraph (d), if a competitive situation arises after a no increase statement has been made, the offeror may choose not to be bound by such statement and shall be free to revise its offer, provided that:

(i) the offeror makes an announcement to that effect as soon as possible (and in any event within 4 business days after the day of the announcement of the relevant competing offer) and notifies shareholders of the offeree in writing at the earliest opportunity; and

(ii) any shareholders who accepted the offer on or after the date of the no increase statement are given a right to withdraw their acceptances during the period of 8 days following the date on which the notice is sent to shareholders and such right is included appropriately and prominently in the notice.

(c) Subject to paragraph (d), the offeror may choose not to be bound by a no increase statement which would otherwise prevent it from making an increased or improved offer which is recommended for acceptance by the offeree board.

(d) An offeror may choose not to bound by a no increase statement in any given circumstances only if it has, with the consent of the Panel, specifically reserved the right to do so in such circumstances at the time at which the statement was made and such circumstances subsequently arise; this shall apply whether or not the offer was recommended for acceptance by the offeree board at the outset. If the offeror makes such a reservation, the first document sent by the offeror to shareholders of the offeree in which reference is made of the no increase statement shall contain prominent reference to such reservation and precise details of it; and any subsequent reference made by the offeror to the no increase statement shall be accompanied by a reference to the reservation or, at the least, to the relevant sections in the previous document which contained the details of the reservation.

(e) A no increase statement shall not be subject to a reservation to set the statement aside which depends solely on subjective judgements by the offeror or its directors or the fulfilment of which is in their control.

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

### **32.3 ENTITLEMENT TO REVISED CONSIDERATION**

If an offer is revised, all shareholders who accepted the original offer shall be entitled to the revised consideration.

### **32.4 NEW CONDITIONS FOR INCREASED OR IMPROVED CONSIDERATION OR FOLLOWING SWITCHES**

Subject to the prior consent of the Panel, and only to the extent necessary to implement an increase or improvement in the consideration under an offer or takeover scheme, or a switch from an offer to a takeover scheme or from a takeover scheme to an offer, the offeree or acquirer may introduce new conditions of the offer or scheme, as the case may be (including, inter alia, obtaining shareholders' approval or a quotation for new shares).

### **32.5 THE OFFEREE BOARD'S OPINION**

(a) The offeree board shall send to the shareholders of the offeree a response circular containing its opinion under Rule 25.2(a)(i) on a revised offer, drawn up in accordance with Rules 25 and 27.

(b) The offeree board shall append to the response circular containing its opinion on a revised offer a separate opinion from the representatives of its employees on the effects of the revised offer on employment, provided such opinion is received in good time before the sending of that response circular. Where any such opinion is received during the course of the offer but not in good time before the sending of the response circular, the offeree shall promptly publish the opinion on a website and announce to a Regulatory Information Service that it has been so published.

### **32.6 INFORMING EMPLOYEES**

(a) When any revised offer document is sent to shareholders of the offeree, both the offeror and the offeree shall make that document readily and promptly available to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

(b) When the offeree board sends to its shareholders a response circular containing its opinion under Rule 25.2(a)(i) on a revised offer, it shall make that circular readily and promptly available to its employee representatives or, where there are no such representatives, to the employees themselves.

(c) The offeree shall inform its employee representatives or, where there are no such representatives, the employees themselves of their right under Rule 32.5(b) to have a separate opinion on the revised offer appended to any offeree board circular published in relation to the revised offer.

**RULE 33. ALTERNATIVE OFFERS****33.1 TIMING AND REVISION**

(a) Subject to Rule 33, the provisions of Rule 31 (other than Rules 31.6, 31.7 and 31.9) and Rule 32 shall apply mutatis mutandis to alternative offers, including cash alternative offers.

(b) For the purposes of Rule 33.1, an arrangement under which the consideration for an offer comprises a fixed combination of cash and securities, or of different classes of securities, but under which shareholders of the offeree may elect, subject to the election of other shareholders of the offeree, to vary the proportion in which they are to receive the different forms of consideration under the offer shall not be treated as an alternative offer and the offeror may close the arrangement without notice on any closing date, provided that its entitlement to do so has been stated clearly in the offer document.

(c) Subject to Rule 33.2, if an offer becomes unconditional as to acceptances, all subsisting alternative offers shall remain open for acceptance in accordance with Rule 31.2.

(d) Subject to paragraph (e), if by a closing date an offer has not become unconditional as to acceptances, the offeror may close an alternative offer (except a cash alternative offer provided to satisfy the requirements of Rule 9 or Rule 37) without prior notice. However if, on the first closing date on which an offer is capable of becoming unconditional as to acceptances, the offer does not become unconditional as to acceptances and is extended, the offeror shall, except as permitted by Rule 33.2, keep all alternative offers open for acceptance for 14 days thereafter but may then close them without prior notice.

(e) Subject to Rule 11.1(e), an offeror which provides a cash alternative offer to satisfy the provisions of Rule 11.1(a) shall keep that alternative offer open for acceptance for not less than 14 days after the date on which the document containing the cash alternative offer is sent to shareholders of the offeree.

**33.2 SHUTTING OFF CASH UNDERWRITTEN ALTERNATIVE OFFERS**

(a) Subject to paragraph (b), if the value of a cash underwritten alternative offer provided by a third party in connection with an offer is, at the time of the announcement of that alternative offer, more than half the maximum value of the offer, the offeror shall not be obliged to keep that alternative offer open in accordance with Rule 31.2 or 33.1 if it has sent a notice to shareholders of the offeree that it reserves the right to close it on a stated date (being not less than 14 days after the



date on which the notice is sent) or to extend it on that stated date. An offeror may not send notice under this paragraph (a) during the period between the time at which a competing offer is announced and the end of the resulting competitive situation.

If an offeror sends notice pursuant to this paragraph (a) and does not close the cash underwritten alternative offer on the stated date but extends it, the offeror shall not have the right to close the alternative offer as described above unless it sends a further notice (which shall comply with the foregoing requirements as to notice) to the shareholders of the offeree.

(b) Paragraph (a) shall not apply to a cash alternative offer provided to satisfy the requirements of Rule 9, Rule 11 or Rule 37.

### **33.3 REINTRODUCTION OF ALTERNATIVE OFFERS**

If an offeror has made a firm statement that an alternative offer will not be extended or reintroduced and such alternative offer has ceased to be open for acceptance, the offeror may not reintroduce that or any substantially similar alternative offer. Accordingly, such an offeror shall not take any action which might result in an obligation to make a cash offer or a cash alternative offer under Rule 9, Rule 11 or Rule 37. If the offeror has not made such a statement and has closed an alternative offer, the offeror shall not be precluded from reintroducing that alternative offer at a later date.

**RULE 34. RIGHT OF WITHDRAWAL**

(a) An acceptor of an offer shall be entitled to withdraw his or her acceptance from the date which is 21 days after the first closing date of the initial offer, if the offer has not by such date become unconditional as to acceptances. Such entitlement to withdraw acceptances shall be exercisable until the earlier of (i) the time at which the offer becomes unconditional as to acceptances and (ii) the final time for lodgement of acceptances of the offer which can be taken into account in accordance with Rule 31.6.

(b) If under any rule a shareholder withdraws his or her acceptance, the offeror shall ensure that all documents of title and other documents lodged with the form of acceptance are returned as soon as practicable (and in any event within 14 days after the receipt of the notice of withdrawal), and the offeror's receiving agent shall immediately give instructions for the release of securities held in escrow or blocked in accordance with the rules of any settlement system.

**PART B - SECTION 10.****MISCELLANEOUS PROVISIONS**

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**RULE 35. RESTRICTIONS FOLLOWING OFFERS****35.1 DELAY OF 12 MONTHS**

Except with the consent of the Panel or as provided in Rule 9.3 or in this Rule, if an offeror has announced a firm intention to make or has made an offer (not being a partial offer) and that offer has been withdrawn or has lapsed, neither the offeror, nor any other person who acted in concert with the offeror, nor any person who following the expiry of the offer period is acting in concert with the offeror or with any such other person (all such persons being collectively referred to in this rule as the **"persons affected"**), may, within the 12 months after the date on which such offer is withdrawn or lapses, either:

- (a) announce an offer or possible offer or make an offer in respect of the offeree; or
- (b) acquire any securities of the offeree if any of the persons affected would thereby become obliged under Rule 9 to make an offer in respect of the offeree; or
- (c) acquire any securities of the offeree if the persons affected or any of them hold securities conferring in the aggregate more than 49.95% but not more than 50% of the voting rights in the offeree; or
- (d) acquire any securities of the offeree, or rights over securities of the offeree, if, following that acquisition, the securities of the offeree which the persons affected or any of them would hold and the securities of the offeree over which the persons affected or any of them would hold rights would in aggregate confer 30% or more of the voting rights in the offeree; or
- (e) make any statement that raises or confirms the possibility that an offer might be made in respect of the offeree; or
- (f) take any steps in connection with a possible offer in respect of the offeree where knowledge of the possible offer might be extended beyond a very restricted number of people in the offeror and its immediate legal, financial, tax and accounting advisers; or
- (g) 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;

provided that:

- (i) the restrictions in Rule 35.1(a) (to the extent only that such restriction would otherwise apply to an announcement made by the offeror in accordance with Rule 12(b)(iii)) and in Rule 35.1(e) and (f) shall not apply in circumstances where the offer has lapsed pursuant to Rule 12(b)(i) and the offeror is continuing to seek clearance from the authority concerned with a view subsequently to making a new offer; and
- (ii) the restrictions in Rule 35.1 shall not apply to an offeror following its making a Rule 2.7 announcement pursuant to Rule 12(b)(iv)(1) nor to a person who becomes subject to the restrictions in Rule 2.8(c)(i) pursuant to Rule 12(b)(iii) or (iv).

### 35.2 DELAY OF 6 MONTHS BEFORE ACQUISITIONS ABOVE THE OFFER VALUE

Except with the consent of the Panel, if an offer (in Rule 35.2 referred to as the “**original offer**”) (not being a partial offer) becomes unconditional as to acceptances, neither the offeror nor any person acting in concert with it as respects the original offer, nor any person who following the expiry of the offer period is acting in concert with the offeror or any such person, shall, during the period commencing with the time at which the original offer becomes unconditional as to acceptances and ending, if it subsequently lapses, on the date on which it lapses or, if it becomes unconditional in all respects, on the date which is 6 months after the date on which it becomes unconditional in all respects, acquire or make an offer to acquire any securities of that company on terms more favourable than those made available to holders of securities of the same class under the original offer. For this purpose, the value of an original offer which is a securities exchange offer shall be calculated as at the day on which such offer becomes unconditional as to acceptances. In addition, neither the offeror nor any person acting in concert with it as respects the original offer, nor any person who following the offer period is acting in concert with the offeror or any such person, shall during the above-mentioned period make any arrangement with any shareholder of the company relating to securities of the company if there would be attached to such arrangement a term favourable to that shareholder which was not available to all shareholders of the company under the original offer. If any of the requirements of Rule 35.2 is not observed, the Panel may, if it is of opinion that, having regard to the General Principles, it is appropriate so to direct, direct the offeror or any person acting in concert with it to pay to the acceptors of the original offer such additional consideration as the Panel may determine to be fair.

**35.3 RESTRICTIONS ON DEALINGS BY A COMPETING OFFEROR  
WHOSE OFFER HAS LAPSED**

Except with the consent of the Panel, where an offer has been one of two or more competing offers and has lapsed, neither the offeror whose offer has lapsed, nor any person acting in concert with that offeror, may acquire any securities of the offeree on terms more favourable than those made available under the lapsed offer until the other competing offer or, as the case may be, each of the other competing offers has either become unconditional in all respects or has itself lapsed. For that purpose, the value of the lapsed offer shall be calculated as at the day on which it lapsed.

**RULE 36. PARTIAL OFFERS<sup>15</sup>****36.1 PANEL'S CONSENT REQUIRED**

Except with the consent of the Panel, a person shall not make a partial offer to acquire voting securities of a relevant company.

**36.2 ACQUIRING DURING AND AFTER A PARTIAL OFFER**

Except with the consent of the Panel:

(a) in the case of a partial offer neither the offeror nor any person acting in concert with it shall acquire any securities of the offeree during the offer period;

(b) if a partial offer (the "**original offer**") becomes unconditional as to acceptances, neither the offeror, nor any person who acted in concert with the offeror as respects the original offer, nor any person who following the expiry of the offer period is acting in concert with the offeror or any such person, shall, during the period commencing at the time at which the original offer becomes unconditional as to acceptances and ending, if it subsequently lapses, on the date on which it lapses or, if it becomes unconditional in all respects, on the date which is 12 months after the date on which it becomes unconditional in all respects, either:

(i) acquire any securities of the offeree other than acquisitions pursuant to valid acceptances of the original offer; or

(ii) take any of the actions prohibited in Rules 35.1(a) and (e) to (g);

(c) if a person has announced a firm intention to make or has made a partial offer which, if accepted in full, might result in the offeror and any persons acting in concert with it holding securities conferring in the aggregate not less than 30% of the voting rights in the offeree and that offer has been withdrawn or lapsed, the restrictions in Rule 35.1 shall, during the 12 months after the date of such withdrawal or lapse, apply to the offeror, to any person who acted in concert with the offeror as respects the offer and to any person who following the expiry of the offer period is acting in concert with the offeror or with any such person.

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<sup>15</sup>Rule 36 is applicable to Shared Jurisdiction Companies only to the extent that it relates to partial offers that constitute takeover bids.



### **36.3 PARTIAL OFFER FOR BETWEEN 30% AND 50%**

If a partial offer is made which, if accepted in full, might result in the offeror and any persons acting in concert with it holding securities conferring in the aggregate not less than 30% and not more than 50% of the voting rights in the offeree, the offeror shall state in the offer document the precise number of shares the subject of the offer and the offer shall not become unconditional as to acceptances unless acceptances are received in respect of not less than that number of shares.

### **36.4 PARTIAL OFFER FOR 30% OR MORE REQUIRES MAJORITY APPROVAL**

If a partial offer is made which, if accepted in full, might 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, the offer shall be conditional not only on the specified level of acceptances being received but also on the offer being approved by shareholders holding securities conferring in the aggregate more than 50% of the voting rights in the offeree, excluding voting rights conferred by securities held by the offeror and any persons acting in concert with it.

### **36.5 WARNING ABOUT CONTROL POSITION**

In the case of a partial offer which, if accepted in full, might result in the offeror and any persons acting in concert with it holding securities conferring in the aggregate more than 49.95% of the voting rights in the offeree, the offer document shall contain specific and prominent reference to that possibility and to the fact that, if the offer is accepted in full, the offeror will be free in accordance with the proviso to Rule 9.1 or, as the case may be, may be permitted by the Panel, subject to Rule 36.2, to acquire further securities without incurring any obligation to make an offer under Rule 9.

### **36.6 SCALING DOWN**

Every partial offer shall be made to all shareholders of the offeree of the relevant class, and the offeror shall make arrangements for those shareholders who wish to do so to accept in full for the relevant percentage of their holdings. Shares tendered by shareholders in excess of such percentage shall be accepted by the offeror in respect of the same proportion of the excess shares tendered by each such shareholder, so as to achieve total acceptances equal to the number of shares for which the offer was made.

### **36.7 COMPARABLE PARTIAL OFFER**

(a) If an offeror makes a partial offer for shares in a relevant company with more than one class of equity share capital which, if accepted in full, might 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, the offeror shall make a comparable partial offer for each class of equity share capital in the offeree, whether or not such class confers voting rights.

(b) If an offeror makes a partial offer for equity share capital of a relevant company which, if accepted in full, might 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 and the offeree has outstanding securities convertible into, or rights or options to subscribe for, shares of the class which is the subject of the offer, the offeror shall consult the Panel as to the terms of an appropriate offer or proposal to be made by the offeror to the holders of such securities.

### **36.8 DUAL CONSIDERATION OFFERS FOR 100%**

The Panel may, if it deems it appropriate to do so, treat an offer made for all the equity share capital conferring voting rights in an offeree not already held by an offeror as a partial offer for the purposes of Rule 36 and as one to which Rule 36.4 applies if under the offer a certain consideration is offered for part of each shareholder's holding and a lower consideration is offered for the balance. Such an offer shall not be made without the consent of the Panel.

### **36.9 ALLOTTED BUT UNISSUED SHARES**

For the purpose of calculating percentages of voting rights under Rule 36, the offeror shall take account of all shares conferring voting rights (or which, in the case of shares allotted but not yet issued, will upon issue confer voting rights) that are unconditionally allotted or issued, whether pursuant to the exercise of conversion or subscription rights or otherwise, before the offer becomes unconditional as to acceptances. If in any case (including, inter alia, as a result of a rights issue) shares have been allotted in renounceable form (even if provisionally), the offeree shall consult the Panel.

**RULE 37. OFFER REQUIRED FOLLOWING THE REDEMPTION OR PURCHASE BY A COMPANY OF ITS OWN SECURITIES<sup>16</sup>**

- (a) Except with the consent of the Panel, if:
- (i) any person, or any persons acting in concert, acquire control of a relevant company wholly or partly by reason of the redemption or purchase by that company of any of its own securities; or
  - (ii) any person, or any persons acting in concert, control a relevant company and, by reason of the redemption or purchase by that company of any of its own securities, the percentage of the voting rights in the company conferred by the securities held by that person or any one or more of those persons is increased by more than 0.05% within any period of 12 months,

such person or, in the case of persons acting in concert, such one or more of those persons as the Panel shall direct shall extend offers, in accordance with the requirements of Rules 9.3 and 9.4 (as modified by paragraph (b)), to the holders of each class of equity share capital in the relevant company, whether or not such class confers voting rights, and also to the holders of each other class of transferable voting securities of the company, provided that, where the aggregate of the voting rights in a relevant company held by a single holder of securities (including persons regarded as such for the purposes of Rule 5.1(a)(ii)) amounts to more than 50% of the voting rights in that company, that person shall not incur an obligation under Rule 37 by reason of any increase in that percentage. The person who is, or in the case of persons acting in concert the persons who are or may become, obliged to make an offer under Rule 37 shall consult the Panel in all cases in which offers are to be made for more than one class of share capital of the offeree. Offers for different classes of equity share capital shall be comparable.

- (b) Rules 9.3, 9.4 and 9.6 shall apply to offers made pursuant to paragraph (a), subject to the following modifications:
- (i) references in those Rules to Rule 9, Rule 9.1 and Rule 9.4 shall be deemed to be references to Rule 37;
  - (ii) paragraphs (a) and (f) of Rule 9.4 shall be replaced by the following paragraphs:
    - “(a) Except with the consent of the Panel and subject as otherwise provided by these paragraphs (a) to (f), an offer made under Rule 37 shall in respect of each class of shares the subject of the offer be in cash, or be

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<sup>16</sup>Rule 37 is not applicable to Shared Jurisdiction Companies.

accompanied by a cash alternative offer, at a price per share which shall not be less than either (i) the highest price per share at which the offeree redeemed or purchased shares in the offeree of that class during the period beginning 12 months prior to the announcement by the offeror of a firm intention to make the offer and ending on the date of the redemption or (as the case may be) purchase by the offeree of its own securities as a result of which the obligation to make the offer arose or (ii) the highest price per share paid by the offeror or any person acting in concert with it for shares in the offeree of that class during the period (in these paragraphs (a) to (f) referred to as the “**relevant period**”) beginning 12 months prior to the announcement by the offeror of a firm intention to make the offer and ending on the date on which the offer closes for acceptance. Accordingly, if, after the time of the announcement of the offeror’s firm intention to make the offer and before the offer closes for acceptance, the offeror or any person acting in concert with it acquires shares in the offeree of the class the subject of the offer at a price per share higher than the offer price, the offeror shall increase the offer price in respect of that class of shares to not less than the highest price per share paid for any of the shares so acquired. Immediately after any such acquisition, the offeror shall announce that a revised offer will be made in accordance with this paragraph (a). Such announcement shall also state the number of shares so acquired and the price per share paid for them and shall include the details prescribed by Rule 2.7(b). After the offer has become unconditional as to acceptances, the cash offer or (as the case may be) the cash alternative offer shall remain open for not less than 14 days after the date on which it would otherwise have expired. The offeror shall consult the Panel if it is making offers for more than one class of shares of the offeree.”

“(f) If in any circumstances the Panel is of opinion that, having regard to the General Principles, it is just and proper so to direct in respect of an offer under Rule 37, then the Panel may, notwithstanding any other provision of this Rule 37, direct that such offer be made at such price as the Panel shall determine to be a fair price.”

and paragraph (g) of Rule 9.4 shall be deleted.

(c) Where the board of a relevant company is aware that a redemption or purchase by the company of its own securities would give rise to an obligation for any person, or any persons acting in concert, to make an offer under Rule 37, then (except where the Panel is satisfied that the redemption or purchase is to be made pursuant to a contract entered into by the company at a time at which its board had no such awareness concerning the redemption or purchase) the company shall not make such redemption or purchase unless:

(i) either the person or persons concerned have confirmed to the company and to the Panel that an offer will be made under Rule 37 or the Panel has granted a waiver of the obligation to make that offer and any conditions to the grant of the waiver have been satisfied; and

(ii) where an offer under Rule 37 is intended to be made, the Panel is satisfied that the resources required to implement the offer are available to the offeror and that the making or implementation of the offer is not dependent upon the passing of a resolution at any meeting of shareholders of the offeror or upon any other condition, consent or arrangement (other than the acceptance condition specified in paragraph (d) and the condition required by Rule 12(a)(i)(1)).

(d) Except with the consent of the Panel, an offer made under Rule 37 shall, subject to Rule 12, be conditional only upon the offeror having received acceptances in respect of shares which, together with securities acquired or agreed to be acquired before or during the offer period, will result in the offeror and any persons acting in concert with it holding in the aggregate securities conferring more than 50% of the voting rights in the offeree.

(e) If an offer under Rule 37 lapses because a purchase of securities of the offeree may not be counted by reason of Rule 10.4 and subsequently the purchase is completed, the offeror shall consult the Panel. In such circumstances the Panel may direct the offeror to make a new offer, to reduce its holding of securities of the offeree or to take such other action as the Panel may consider appropriate.

**RULE 38. DEALINGS AND OPENING POSITION DISCLOSURES BY  
CONNECTED EXEMPT PRINCIPAL TRADERS**

**38.1 PROHIBITED DEALINGS**

An exempt principal trader connected with an offeror or the offeree shall not carry out any dealings with the purpose of assisting the offeror or the offeree (as the case may be) in connection with the offer.

**38.2 DEALINGS BETWEEN OFFERORS AND CONNECTED  
EXEMPT PRINCIPAL TRADERS**

No offeror or person acting in concert with it shall during the offer period deal as principal with an exempt principal trader connected with the offeror in relevant securities of the offeree.

**38.3 ASSENTING SECURITIES**

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

**38.4 VOTING**

An exempt principal trader connected with an offeror or the offeree shall not, during the offer period or at any earlier time at which it has reason to believe that an offer is likely to be made, exercise the voting rights conferred by any securities of the offeror or offeree owned by it in respect of any resolution which bears on the offer.

**38.5 DISCLOSURE OF DEALINGS**

Dealings in relevant securities during the offer period by an exempt principal trader connected with an offeror or the offeree shall be aggregated and disclosed publicly by the principal trader in accordance with Rule 8.4(b) and Rule 8.5(a):

(a) if the relevant trading desk has recognised intermediary status and is dealing in a client-serving capacity, following the format of the specimen disclosure form (Form 38.5(a)), as set out in Appendix 3; and

(b) if the relevant trading desk does not have recognised intermediary status, or if it does have that status but it is not dealing in a client-serving capacity, following the format of the specimen disclosure form (Form 38.5(b) & 38.6), as set out in Appendix 3,

provided that where an offeror has announced that an offer or possible offer is, or is likely to be, wholly in cash, this Rule shall not require the disclosure of dealings in relevant securities of the offeror.

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

#### **38.6 OPENING POSITION DISCLOSURES**

(a) An exempt principal trader connected with an offeror which does not have recognised intermediary status or which does have recognised intermediary status but which holds any interest or short position in any relevant securities of the offeror or of the offeree in a proprietary capacity must make an opening position disclosure in accordance with Rule 8.4(a) and Rule 8.5(a):

- (i) after the announcement that first identifies the offeror with which it is connected as an offeror; and
- (ii) after the announcement that first identifies a competing securities exchange offeror.

(b) An exempt principal trader connected with the offeree which does not have recognised intermediary status or which does have recognised intermediary status but which holds any interest or short position in any relevant securities of the offeror or of the offeree in a proprietary capacity must make an opening position disclosure in accordance with Rule 8.4(a) and Rule 8.5(a):

- (i) after the commencement of the offer period; and
- (ii) if later, after the announcement that first identifies any securities exchange offeror.

Where an offeror has announced that an offer or possible offer is, or is likely to be, wholly in cash, this Rule shall not require the disclosure of positions in relevant securities of the offeror.

Disclosures under Rule 38.6(a) and (b) shall follow the format of the specimen disclosure form (Form 38.5(b) & 38.6), as set out in Appendix 3.

**RULE 39. “DUAL-COMPANY” TRANSACTIONS<sup>17</sup>**

Except with the consent of the Panel, a relevant company shall not enter into any agreement or transaction of the kind described in Rule 3.1(d) of Part A nor any agreement or transaction which, but for the fact that it constitutes a takeover, would be an agreement or transaction of the kind described in that Rule. In considering what conditions, if any, to attach to its consent in any such case, the Panel shall have regard to the General Principles.

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<sup>17</sup> Rule 39 is not applicable to Shared Jurisdiction Companies.



**RULE 40. REVERSE TAKEOVER TRANSACTIONS<sup>18</sup>****40.1 NOTIFICATION, CONDITIONS AND OTHER REQUIREMENTS OF THE PANEL**

A relevant company (in Rule 40 referred to as the “**acquirer**”) which proposes to enter into a reverse takeover transaction (in Rule 40 referred to as the “**transaction**”) shall notify the Panel promptly, following which notification the Panel may:

- (a) (where the transaction constitutes a takeover of the acquirer) if so requested, specify the conditions subject to which the Panel may grant a waiver of the obligation, arising in consequence of the transaction, to make an offer under Rule 9 in respect of the acquirer; and
- (b) specify such other requirements in respect of the transaction as the Panel, having regard to the General Principles and the Rules, may deem appropriate.

**40.2 CIRCULAR TO SHAREHOLDERS OF THE ACQUIRER**

On or before the date on which the acquirer sends to its shareholders notice of a general meeting to approve the transaction or such other date as the Panel may specify, the acquirer shall send a circular to each of its shareholders containing the following information:

- (a) the views of its directors on the effects of implementation of the transaction on the business and future prospects of the acquirer, with the substance and source of the advice given to them by the independent adviser appointed pursuant to Rule 3.2;
- (b) information on shareholdings and dealings as specified in Rule 25.4 (other than subparagraph (a) (v) of that Rule), on arrangements in relation to dealings as specified in Rule 25.7(a) and on material contracts as specified in Rule 25.7(b), as if references in those Rules to:
  - (i) the first response circular were references to the circular required by Rule 40.2 to be sent;
  - (ii) the offeree and the offeror were respectively references to the acquirer and the company or other person whose securities, business or assets the acquirer proposes to acquire in the transaction; and

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<sup>18</sup> Rule 40 is not applicable to Shared Jurisdiction Companies.

- (iii) the commencement of the offer period were references to:

  - (1) the time at which an announcement or statement concerning the transaction or the discussions leading to the transaction was first made by one of the parties involved; or
  - (2) such other time as the Panel may specify as appropriate in the circumstances of a particular case;
- (c) information on the service contracts of its directors, as specified in Rule 25.5, as if the directors or proposed directors of the acquirer were directors or proposed directors of an offeree;
- (d) if the board of the acquirer is split in its views on the transaction, the views of those directors who oppose the transaction, unless the Panel consents otherwise; and
- (e) if a director of the acquirer has a conflict of interest in relation to the transaction, the nature of the conflict and a statement confirming that such director has not been joined with the remainder of the board in the expression of its views on the proposal.

**RULE 41. TAKEOVERS BY SCHEME OF ARRANGEMENT<sup>19</sup>****41.1 PROCEDURES IN RELATION TO TAKEOVER SCHEMES**

(a) Where, in connection with a takeover scheme of arrangement, the relevant company concerned or any other person initiates or takes any other step in any proceedings in the Court under section 450 of the Companies Act, 2014, or otherwise, the company or (as the case may be) such other person shall on each such occasion notify the Panel in writing of that fact and provide the Panel with copies of all documents furnished or to be furnished by that person to the Court.

(b) Unless otherwise agreed by the Panel, such notification of and provision of documents to the Panel as is referred to in paragraph (a) shall be made at the same time as or immediately following the initiation of the relevant proceedings or (as the case may be) the notification of any such other step in such proceedings to the Court or to the offices of the Court but so that in any event copies of the takeover scheme, of the notice of the scheme meeting and of every explanatory statement proposed to be sent to any of its shareholders or creditors by the relevant company concerned in accordance with section 452(1)(a) of the Companies Act, 2014, shall be received by the Panel not later than the tenth business day before the date on which it is proposed that they be considered by the Court and copies of any such other documents as are referred to in paragraph (a) shall be received by the Panel not later than the fourth business day before the date on which it is proposed that they be considered by the Court.

(c) The Panel may seek leave of the Court to appear and be heard by the Court in the course of any such proceedings as are referred to in paragraph (a).

(d) The Panel may make such rulings and give such directions in relation to a takeover scheme as it thinks fit, having regard to the General Principles. Where any such ruling or direction is made or given by the Panel at any time prior to the scheme taking effect, the relevant company or such other person as the Panel may specify shall, if and to the extent so directed by the Panel, notify the Court of the ruling or direction promptly following the making or giving of the ruling or direction or the initiation of the relevant proceedings (whichever is the later). The Panel shall provide the Court with such information as the Court may request concerning any ruling or direction made or given by the Panel.

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<sup>19</sup> Rule 41 is not applicable to Shared Jurisdiction Companies.

## 41.2 APPLICATION OF THE RULES TO TAKEOVER SCHEMES

Subject to and in accordance with the provisions of Appendix 4 and unless the context requires otherwise, the Rules (other than Rule 41 and Appendix 4) shall apply *mutatis mutandis* to takeover schemes of arrangement as they apply to offers constituting takeovers but so that for that purpose in the case of a takeover scheme the acquirer shall be treated as if it were making an offer to the holders of voting securities of the acquiree at the time at which the acquiree summons the scheme meeting, and references in the Rules (other than Rule 41 and Appendix 4) to an “offer” shall be construed accordingly.

## 41.3 SWITCHING

- (a) (i) An offeror that is proposing to switch from an offer to a takeover scheme may not for that purpose withdraw its offer without the consent of the Panel.
- (ii) An acquirer that is proposing to switch from a takeover scheme to an offer may not for that purpose announce an offer without the consent of the Panel.
- (b) An offeror or acquirer shall not be prevented from making such a switch by reason only of its not having reserved the right to change the structure of its offer or scheme (as the case may be).
- (c) The Panel will determine the offer or scheme timetable that will apply following any switch in relation to which it has consented in accordance with paragraph (a).
- (d) The offeror or acquirer shall announce a switch in accordance with Rule 30.1. The announcement shall include:
- (i) details of all changes to the terms and conditions of the offer or scheme as a result of the switch;
  - (ii) details of any material changes to the other details originally announced pursuant to Rule 2.7(b);
  - (iii) an explanation of the scheme or offer timetable applicable following the switch (as determined by the Panel); and
  - (iv) an explanation of whether or not any irrevocable commitments or letters of intent procured by the offeror or acquirer or persons acting in concert with it will remain valid following the switch.

#### 41.4 INTERPRETATION

In Rule 41 and in Appendix 4:

(a) references to “**acquiree**” and “**acquirer**” shall be construed in accordance with paragraphs (1) and (2) respectively of Section 2 in Appendix 4;

(b) the “**Application**” means the application of the Rules (other than Rule 41 and Appendix 4) to takeover schemes, as prescribed by Rule 41.2;

(c) “**court sanction hearing**” means the hearing of the Court at which a petition to sanction a takeover scheme is presented;

(d) “**related general meeting**” means, in relation to a takeover scheme, a general meeting of the acquiree convened to consider a resolution to approve or to give effect to, or which is otherwise connected with, the scheme;

(e) “**partial takeover scheme**” means a takeover scheme of arrangement under which, if it takes effect, the acquirer and any other persons acting in concert with the acquirer will hold securities conferring in aggregate less than 100% of the voting rights in the acquiree;

(f) “**scheme circular**” means, in relation to a takeover scheme, the notice of the scheme meeting and the explanatory statement sent or to be sent by the acquiree to the shareholders or class of shareholders of the acquiree in accordance with section 452(1)(a) of the Companies Act, 2014, together with any accompanying material directed or permitted by the Court to be sent to such shareholders;

(g) “**scheme meeting**” means, in relation to a takeover scheme, the meeting of the shareholders or class of shareholders of the acquiree convened or summoned or to be convened or summoned under section 450 of the Companies Act, 2014, to vote in respect of the scheme; and where, in relation to a takeover scheme, more than one such meeting is convened or summoned or is to be convened or summoned, “**scheme meeting**” shall, where appropriate, be construed to refer to each such meeting;

(h) “**scheme resolution**” means, in relation to a takeover scheme, the resolution to approve the scheme, proposed or to be proposed at the scheme meeting;

(i) a takeover scheme shall be deemed to take effect at the time at which a copy of the order of the Court sanctioning the scheme is delivered to the registrar of companies for registration in accordance

## 10.20

with section 454(1) of the Companies Act, 2014, or, if the scheme or that order specifies a later time at which the scheme shall take effect, at that later time; and

(j) references to a takeover scheme shall include references to that scheme in any amended form.

**APPENDIX 1**

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## PROCEDURES FOR RECEIVING AGENTS

### 1. DEFINITION

In this Appendix, “**final register day**”, in relation to an offer, means the day two days prior to the final closing date of the offer.

### 2. QUALIFICATIONS FOR ACTING AS A RECEIVING AGENT

A receiving agent to an offer (the “**receiving agent**”) shall:

(a) be licensed for banking operations by the Central Bank of Ireland and have a registrar’s department established for not less than five years; or

(b) be a member of the Registrars Group of The Chartered Governance Institute UK & Ireland and:

(i) be responsible for the share register of a public company, other than itself, having securities admitted to the Official List of Euronext Dublin and with not less than 10,000 shareholders; or

(ii) be responsible for the share registers of not less than five public companies having securities quoted on the Stock Exchange; or

(c) be an organisation which has satisfied the Panel that it has the experience and resources necessary to act as receiving agent (or exchange agent) in connection with the relevant offer (and references in this Appendix to a receiving agent shall include an exchange agent).

### 3. THE PROVISION OF THE OFFEREE’S REGISTER

(a) When an offeror announces a firm intention to make an offer, the offeree shall forthwith instruct its registrar (the “**registrar**”) to provide, if requested by the offeror, to the offeror a copy of the share register of the offeree, within two business days of that request. The registrar shall provide to the offeror a copy of the share register of the offeree, updated to reflect the position as at the registrar’s close of business on the date of the request. Except with the consent of the Panel, the register shall be supplied in electronic form appropriate to the requirements of the receiving agent.

(b) After the announcement of a firm intention to make an offer, the offeree shall instruct the registrar, and the registrar shall be obliged, to keep the register as up-to-date as the register maintenance system will allow during the offer period. The registrar shall be obliged, in addition to the registration of transfers, to register all changes affecting the register (for example, court orders, grants of representation, marriage certificates, changes of address etc).



The registrar shall provide to the receiving agent, on a daily basis and within two business days after notification to it of the relevant transaction, updates to the register recording the transfer of registered holdings and copies of all documents which would alter the position recorded in the last copy register provided to the offeror. The registrar shall make available for collection by the receiving agent, by noon at the latest on the day preceding the final closing date of the offer, any such information or documentation received by the registrar by the final register day which has not yet been provided to the receiving agent.

During the period commencing on the final register day and ending on the date that the offer becomes unconditional as to acceptances or lapses, the registrar shall continue to update the register on a daily basis. The registrar shall process by 4.00 p.m. on the final closing date of the offer all transfers and other documents which have been received by it by 1.00 p.m. on that date. The registrar shall immediately send copies of all such transfers and other documents to the receiving agent insofar as they have not been previously notified to it.

(c) The receiving agent shall have, and the registrar shall arrange that the receiving agent shall have, access to the registrar at all times, including weekends and public holidays, during the period commencing on the final register day and ending on the date that the offer becomes unconditional as to acceptances or lapses, in order that the receiving agent may investigate any queries arising from acceptances and purchases.

#### 4. THE PROVISION OF ADDRESSES, ELECTRONIC ADDRESSES, ELECTIONS AND OTHER DETAILS

(a) When a firm intention to make an offer is announced, the offeree should respond, or instruct its registrar to respond, within two business days to a request from the offeror for details in respect of:

(i) electronic addresses provided to the offeree by shareholders in the offeree for the receipt of documents, announcements and other information in electronic form;

(ii) addresses, electronic addresses and other information provided to the offeree by any other persons entitled to receive copies of documents, announcements or information for the receipt of such communications in hard copy form or electronic form (including a copy of any register(s) of persons entitled to receive documents under Rule 15); and

(iii) elections made in accordance with applicable legal or regulatory provisions by, or on behalf of, shareholders in the offeree or any other relevant persons to receive communications from the offeree in hard copy form, provided, in each case, that the relevant address, electronic address,

election or other information has been provided to the offeree for the receipt of information generally and not only for certain specific types of information.

(b) The information provided to an offeror in compliance with (a) above should be updated to reflect the position as at the registrar's close of business on the day of the request. The offeree shall ensure, or shall instruct its registrar to ensure, that the information described in (a) above is kept as up-to-date as the relevant maintenance system will allow and updates shall be provided to the offeror, or its receiving agent, in respect of any changes in that information at the same time as updates to the company's register are provided under Section 3 above to the offeror's receiving agent.

(c) When the information referred to in (a) above is provided to an offeror by the offeree or its registrar, the use of that information by the offeror for purposes that are not related to the offer may be subject to legal restrictions, including in relation to the protection of data.

#### **5. COUNTING OF ACCEPTANCES**

The receiving agent shall ensure that all acceptances counted as valid meet the requirements set out in Rule 10.3 and, if appropriate, Rule 10.5.

#### **6. COUNTING OF PURCHASES AND OTHER ACQUISITIONS**

The receiving agent shall ensure that all purchases and other acquisitions otherwise than pursuant to the offer counted as valid meet the requirements set out in Rule 10.4 and, if appropriate, Rule 10.5.

#### **7. EARLY SATISFACTION OF THE ACCEPTANCE CONDITION**

The receiving agent shall ensure that the requirements of Rule 10.5 have been satisfied prior to an offer becoming unconditional as to acceptances before the final closing date.

#### **8. DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES**

Receiving agents' certificates shall be unqualified, save that the certificate may include a disclaimer (to the extent necessary) as to limitations on the responsibility of the receiving agent for the errors of third parties which are not evident from the documents available to the receiving agent. Except with the consent of the Panel, a receiving agent shall not issue a receiving agent's certificate which contains any limitation on the responsibility of the receiving agent that is more extensive than those contained in the following form:

"In issuing this certificate, we have, where necessary, relied on the following matters:

- (a) certifications of acceptance forms by the offeree's registrar;
- (b) certifications by the offeree's registrar that a transfer of shares has been executed by or on behalf of the registered holder in favour of the offeror or its nominees;
- (c) confirmation from the offeror of the validity of shares recorded as registered holdings and purchases in the context of Rule 10.4(c) and (d); and
- (d) the validity of any electronic messages received from the operator of the Euroclear System (or its nominee) in respect of securities admitted to the Euroclear System, or the operator of any other book entry transfer facility (or its nominee) in respect of securities admitted to another book entry transfer facility, the effect of which is to confirm that an acceptance is covered by an electronic acceptance instruction.

As the offeror's receiving agent, we have examined with due care and attention the information provided to us, and, as appropriate, made due and careful enquiry of relevant persons, in order that we may issue this certificate and we have no reason to believe that the information contained in it cannot be relied upon but, subject thereto, we accept no responsibility or liability whatsoever in respect of any error of the offeree's registrar for the matters set out above to the extent that we have relied upon them in issuing this certificate."

## APPENDIX 2

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## PROCEDURES FOR FORMULA OFFERS

### 1. APPLICATION

This Appendix applies to any offer (in this Appendix referred to as a “**formula offer**”) for the share capital of an investment trust where the consideration under the offer is to be calculated by reference to a formula related to the net assets of the offeree.

### 2. SPECIFICATION OF THE FORMULA

As it is common for the result of the formula to differ from net asset value as generally understood, the term “net asset value” shall not be used in connection with a formula for the calculation of the consideration to be paid to shareholders under an offer. The expression “**formula asset value**” shall be used instead. In the case of a formula offer, the offeror shall clearly set out the means by which the consideration will be calculated in both the announcement of a firm intention to make the offer and the offer document. The formula may be expressed algebraically, with the significant constituent elements being identified in a separate appendix.

### 3. DATE ON WHICH THE FORMULA CRYSTALLISES

In the case of a formula offer, calculation of the consideration payable to shareholders under the formula shall be determined as at the day on which the offer becomes unconditional as to acceptances. All shareholders who accept the offer shall receive the consideration on the basis determined as at that date.

### 4. ESTIMATE OF THE FORMULA OFFER VALUE

The announcement of a firm intention to make a formula offer and the offer document shall include an estimate of the value per share of the offer on the day of the announcement or (as the case may be) on the latest practicable date prior to sending the offer document.

### 5. MAXIMUM AND MINIMUM PRICES

In the case of a formula offer, the offeror may include in the offer a term that if the application of the formula produces a price higher than a specified price only that specified price will be paid or a term that if it produces a price lower than a specified price then that specified price will be paid. If so included in the offer, any such term shall be given due prominence in the offer document.

### 6. RULE 6

In the case of a formula offer, the determination of whether a purchase of securities of the offeree by the offeror or any person acting in

concert with it has given rise to an obligation under Rule 6 to increase the consideration payable under the offer shall be made by calculating the notional price that would have been payable on the basis of the application of the formula at the date of such purchase. If the price paid for the securities so purchased is higher than that notional price, the offeror shall increase the price available under the offer by revising the formula so that it reflects that higher price; provided that if details of the relevant net asset values of the offeree are not made available to the offeror by the offeree and consequently the offeror cannot make that calculation, the offeror shall be obliged to pay to all accepting shareholders not less than the highest price paid for the securities so purchased.

#### 7. RULES 9, 11 AND 37

Rules 9, 11 and 37 shall apply to formula offers. Such an offer shall contain a term that, if the application of the formula produces a price lower than the highest cash price paid in respect of any purchases of securities of the offeree to which Rule 9, 11 or 37 applies, that highest price will be paid to all accepting shareholders.

#### 8. "FLOOR AND CEILING" CONDITIONS

An offeror may incorporate conditions ("**floor and ceiling**" conditions) in a formula offer which provide that the offer shall lapse if the formula asset value (calculated as at the day on which the offer becomes unconditional as to acceptances) falls outside specified limits or if movements in certain securities markets' indices exceed specified limits.

#### 9. OFFEREE BOARD OBLIGATIONS

In the case of a formula offer, the offeree board shall not be obliged to provide information to the offeror that it may require for the calculation of a formula price until that offeror has acquired control of the offeree, provided that, if an offer has a "floor and ceiling" condition related to formula asset value, the offeree board shall announce, within 7 days after the offer has become unconditional as to acceptances, whether the formula price calculated as at the day the offer became unconditional as to acceptances fell within the specified limits.

If an offer becomes unconditional in all respects, the offeree and the offeror shall co-operate in calculating the price payable to accepting shareholders according to the application of the formula.

**APPENDIX 3  
DISCLOSURE FORMS**

**FORM 8.1(a) & (b)  
(Opening Position Disclosure)**

**IRISH TAKEOVER PANEL**

**OPENING POSITION DISCLOSURE UNDER RULE 8.1(a) AND (b) OF  
THE IRISH TAKEOVER PANEL ACT, 1997, TAKEOVER RULES, 2022  
BY AN OFFEROR OR AN OFFEREE**

**1. KEY INFORMATION**

<b>(a) Full name of discloser:</b>	
<b>(b) Owner or controller of interests and short positions disclosed, if different from 1(a):</b>  <i>The naming of nominee or vehicle companies is insufficient. For a trust, the trustee(s), settlor and beneficiaries must be named.</i>	
<b>(c) Name of offeror/offeree in relation to whose relevant securities this form relates:</b>  <i>Use a separate form for each offeror/offeree</i>	
<b>(d) Is the discloser the offeror or the offeree?</b>	<b>OFFEROR / OFFEREE</b>
<b>(e) Date position held:</b>  <i>The latest practicable date prior to the disclosure</i>	
<b>(f) In addition to the company in 1(c) above, is the discloser also making disclosures in respect of any other party to the offer?</b>  <i>If it is a cash offer or possible cash offer, state "N/A"</i>	<b>YES / NO / N/A</b>  <i>If YES, specify which:</i>

**2. INTERESTS AND SHORT POSITIONS**

*If there are interests and positions to disclose in more than one class of relevant securities of the offeror or offeree named in 1(c), copy table 2 for each additional class of relevant security.*

**Interests and short positions in the relevant securities of the offeror or offeree to which the disclosure relates (Note 1)**

<b>Class of relevant security:</b> (Note 2)				
	<b>Interests</b>		<b>Short positions</b>	
	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>
<b>(1) Relevant securities owned and/or controlled:</b>				
<b>(2) Cash-settled derivatives:</b>				
<b>(3) Stock-settled derivatives (including options) and agreements to purchase/sell:</b>				
<b>Total:</b>				

*All interests and all short positions should be disclosed.*

*Details of options including rights to subscribe for new securities and any open stock-settled derivative positions (including traded options), or agreements to purchase or sell relevant securities, should be given on a Supplemental Form 8.*

**3. INTERESTS AND SHORT POSITIONS OF PERSONS ACTING IN CONCERT WITH THE PARTY MAKING THE DISCLOSURE**

<b>Details of any interests and short positions (including directors' and other employee options) of any person acting in concert with the party making the disclosure:</b>

*Details of any open stock-settled derivative positions (including traded options), or agreements to purchase or sell relevant securities, should be given on a Supplemental Form 8.*



#### 4. OTHER INFORMATION

##### (a) Indemnity and other dealing arrangements

**Details of any indemnity or option arrangement, or any agreement or understanding, formal or informal, relating to relevant securities which may be an inducement to deal or refrain from dealing entered into by the party to the offer making the disclosure or any person acting in concert with it:**

*Irrevocable commitments and letters of intent should not be included. If there are no such agreements, arrangements or understandings, state "none"*

##### (b) Agreements, arrangements or understandings relating to options or derivatives

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

##### (c) Attachments

Is a Supplemental Form 8 attached?	YES/NO

<b>Date of disclosure:</b>	
<b>Contact name:</b>	
<b>Telephone number:</b>	

*Public disclosures under Rule 8.1 of the Rules must be made to a Regulatory Information Service.*

**NOTES ON FORM 8.1(a) and (b)**

- 1. See the definition of “interest in a relevant security” in Rule 2.5 of Part A of the Rules and see Rule 8.6(a) of Part B of the Rules.**
- 2. See the definition of “relevant securities” in Rule 2.1 of Part A of the Rules.**
- 3. If details included in a disclosure under Rule 8 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.**

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

**References in these notes to “the Rules” are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2022.**

**FORM 8.1(c) & (d)(i)**  
**(Dealing)**

**IRISH TAKEOVER PANEL**

**DEALING DISCLOSURE UNDER RULE 8.1(c) AND (d)(i) OF THE IRISH  
TAKEOVER PANEL ACT, 1997, TAKEOVER RULES, 2022**

**BY AN OFFEROR, OFFEREE OR PARTIES ACTING IN CONCERT  
WITH THEM IN RESPECT OF DEALINGS FOR THEMSELVES OR  
FOR DISCRETIONARY CLIENTS**

**1. KEY INFORMATION**

<b>(a) Full name of discloser:</b>	
<b>(b) Owner or controller of interests and short positions disclosed, if different from 1(a):</b>  <i>The naming of nominee or vehicle companies is insufficient. For a trust, the trustee(s), settlor and beneficiaries must be named.</i>	
<b>(c) Name of offeror/offeree in relation to whose relevant securities this form relates:</b>  <i>Use a separate form for each offeror/offeree</i>	
<b>(d) Status of person making the disclosure:</b>  <i>e.g. offeror, offeree, person acting in concert with the offeror/offeree (specify name of offeror/offeree)</i>	
<b>(e) Date dealing undertaken:</b>	
<b>(f) In addition to the company in 1(c) above, is the discloser also making disclosures in respect of any other party to the offer?</b>  <i>If it is a cash offer or possible cash offer, state "N/A"</i>	<b>YES / NO / N/A</b>  <i>If YES, specify which:</i>

## 2. INTERESTS AND SHORT POSITIONS

*If there are positions to disclose in more than one class of relevant securities of the offeror or offeree named in 1(c), copy table 2 for each additional class of relevant security.*

**Interests and short positions in the relevant securities of the offeror or offeree to which the disclosure relates following the dealing (Note 1)**

Class of relevant security: (Note 2)				
	Interests		Short positions	
	Number	%	Number	%
<b>(1) Relevant securities owned and/or controlled:</b>				
<b>(2) Cash-settled derivatives:</b>				
<b>(3) Stock-settled derivatives (including options) and agreements to purchase/sell:</b>				
<b>Total:</b>				

*All interests and all short positions should be disclosed.*

*Details of options including rights to subscribe for new securities and any open stock-settled derivative positions (including traded options), or agreements to purchase or sell relevant securities, should be given on a Supplemental Form 8 .*

## 3. DEALINGS BY THE PERSON MAKING THE DISCLOSURE (Note 3)

*Where there have been dealings in more than one class of relevant securities of the offeror or offeree named in 1(c), copy table 3(a), (b), (c) or (d) (as appropriate) for each additional class of relevant security dealt in.*

*The currency of all prices and other monetary amounts should be stated.*

## (a) Purchases and sales

- (i) Offeree, offeror or person acting in concert (except for a principal trader in the same group as a financial or other professional adviser acting in relation to the offer for the offeree or the offeror)

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

- (ii) Principal trader where the sole reason for the connection is that the principal trader is in the same group as a financial or other professional adviser acting in relation to the offer for the offeree or the offeror

Class of relevant security	Purchases/sales	Total number of securities	Highest price per unit paid/received	Lowest price per unit paid/received

## (b) Cash-settled derivative transactions

Class of relevant security	Product description <i>e.g. CFD</i>	Nature of dealing <i>e.g. opening/ closing a long/ short position, increasing/ reducing a long/ short position</i>	Number of reference securities (Note 5)	Price per unit (Note 4)

**(c) Stock-settled derivative transactions (including options)**

**(i) Writing, selling, purchasing or varying**

<b>Class of relevant security</b>	<b>Product description</b> <i>e.g. call option</i>	<b>Writing, purchasing, selling, varying etc.</b>	<b>Number of securities to which option relates</b> (Note 5)	<b>Exercise price per unit</b>	<b>Type</b> <i>e.g. American, European etc.</i>	<b>Expiry date</b>	<b>Option money paid/received per unit</b>

**(ii) Exercise**

<b>Class of relevant security</b>	<b>Product description</b> <i>e.g. call option</i>	<b>Exercising/ exercised against</b>	<b>Number of securities</b>	<b>Exercise price per unit</b> (Note 4)

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

<b>Class of relevant security</b>	<b>Nature of dealing</b> <i>e.g. subscription, conversion, exercise</i>	<b>Details</b>	<b>Price per unit (if applicable)</b> (Note 4)

**4. OTHER INFORMATION**

**(a) Indemnity and other dealing arrangements**

**Details of any indemnity or option arrangement, or any agreement or understanding, formal or informal, relating to relevant securities which may be an inducement to deal or refrain from dealing entered into by the party to the offer or person acting in concert making the disclosure and any other person:**

*Irrevocable commitments and letters of intent should not be included. If there are no such agreements, arrangements or understandings, state "none"*

## (b) Agreements, arrangements or understandings relating to options or derivatives

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

## (c) Attachments

Is a Supplemental Form 8 attached?	YES/NO

Date of disclosure:	
Contact name:	
Telephone number:	

*Public disclosures under Rule 8.1 of the Rules must be made to a Regulatory Information Service.*

**NOTES ON FORM 8.1(c) and (d)(i)**

- 1. See the definition of “interest in a relevant security” in Rule 2.5 of Part A of the Rules and see Rule 8.6(b) of Part B of the Rules.**
- 2. See the definition of “relevant securities” in Rule 2.1 of Part A of the Rules.**
- 3. See the definition of “dealing” in Rule 2.1 of Part A of the Rules.**
- 4. If the economic exposure to changes in the price of securities is limited, for example, by virtue of a stop loss arrangement relating to a spread bet, full details must be given.**
- 5. See Rule 2.5(d) of Part A of the Rules.**
- 6. If details included in a disclosure under Rule 8 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.**

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

***References in these notes to “the Rules” are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2022.***



**FORM 8.1(d)(ii)**  
**(Private disclosure)**

**IRISH TAKEOVER PANEL**

**DEALING DISCLOSURE UNDER RULE 8.1(d)(ii) OF THE IRISH  
TAKEOVER PANEL ACT, 1997, TAKEOVER RULES, 2022 BY  
CONNECTED EXEMPT FUND MANAGERS ON BEHALF OF  
DISCRETIONARY CLIENTS**

**1. KEY INFORMATION**

<b>(a) Name of exempt fund manager:</b>	
<b>(b) Name of offeror/offeree in relation to whose relevant securities this form relates:</b>  <i>Use a disclosure form for each offeror/offeree</i>	
<b>(c) Name of offeror/offeree with which exempt fund manager is connected:</b>	
<b>(d) Date dealing undertaken:</b>	
<b>(e) In addition to the company in 1(b) above, is the exempt fund manager also making disclosures in respect of any other party to the offer?</b>  <i>If it is a cash offer or possible cash offer, state "N/A"</i>	<b>YES / NO / N/A</b>  <i>If YES, specify which:</i>

**2. INTERESTS AND SHORT POSITIONS**

*If there are interests and short positions to disclose in more than one class of relevant securities of the same offeror or offeree named in 1(b), copy table 2 for each additional class of relevant security.*

**Interests and short positions in the relevant securities of the offeror or offeree to which the disclosure relates following the dealing (Note 1)**

Class of relevant security: (Note 2)				
	Interests		Short positions	
	Number	%	Number	%
<b>(1) Relevant securities owned and/or controlled:</b>				
<b>(2) Cash-settled derivatives:</b>				
<b>(3) Stock-settled derivatives (including options) and agreements to purchase/sell:</b>				
<b>Total:</b>				

*All interests and all short positions should be disclosed.*

*Details of options including rights to subscribe for new securities and any open stock-settled derivative positions (including traded options), or agreements to purchase or sell relevant securities, should be given on a Supplemental Form 8.*

**3. DEALINGS BY THE EXEMPT FUND MANAGER (Note 3)**

*Where there have been dealings in more than one class of relevant securities of the offeror or offeree named in 1(b), copy table 3(a), (b), (c) or (d) (as appropriate) for each additional class of relevant security dealt in.*

*The currency of all prices and other monetary amounts should be stated.*

**(a) Purchases and sales**

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

**(b) Cash-settled derivative transactions**

<b>Class of relevant security</b>	<b>Product description</b> <i>e.g. CFD</i>	<b>Nature of dealing</b> <i>e.g. opening/ closing a long/ short position, increasing/ reducing a long/ short position</i>	<b>Number of reference securities</b> (Note 5)	<b>Price per unit</b> (Note 4)

**(c) Stock-settled derivative transactions (including options)****(i) Writing, selling, purchasing or varying**

<b>Class of relevant security</b> <i>e.g. call option</i>	<b>Product description</b> <i>e.g. call option</i>	<b>Writing, purchasing, selling, varying etc.</b>	<b>Number of securities to which option relates</b> (Note 5)	<b>Exercise price per unit</b>	<b>Type</b> <i>e.g. American, European etc.</i>	<b>Expiry date</b>	<b>Option money paid/received per unit</b>

**(ii) Exercise**

<b>Class of relevant security</b>	<b>Product description</b> <i>e.g. call option</i>	<b>Exercising/ exercised against</b>	<b>Number of securities</b>	<b>Exercise price per unit</b> (Note 4)

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

<b>Class of relevant security</b>	<b>Nature of dealing</b> <i>e.g. subscription, conversion, exercise</i>	<b>Details</b>	<b>Price per unit (if applicable)</b> (Note 4)

**4. OTHER INFORMATION**

**(a) Indemnity and other dealing arrangements**

<p><b>Details of any indemnity or option arrangement, or any agreement or understanding, formal or informal, relating to relevant securities which may be an inducement to deal or refrain from dealing entered into by the exempt fund manager making the disclosure and any party to the offer or any person acting in concert with a party to the offer:</b></p> <p><i>Irrevocable commitments and letters of intent should not be included. If there are no such agreements, arrangements or understandings, state "none"</i></p>

**(b) Agreements, arrangements or understandings relating to options or derivatives**

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

**(c) Attachments**

<b>Is a Supplemental Form 8 attached?</b>	<b>YES/NO</b>
<b>Date of disclosure:</b>	
<b>Contact name:</b>	
<b>Telephone number:</b>	

*Private disclosures under Rule 8.1(d)(ii) of the Rules must be emailed to the Panel at [admin@irishtakeoverpanel.ie](mailto:admin@irishtakeoverpanel.ie)*

**NOTES ON FORM 8.1(d)(ii)**

1. ***See the definition of “interest in a relevant security” in Rule 2.5 of Part A of the Rules and see Rule 8.6(b) of Part B of the Rules.***
2. ***See the definition of “relevant securities” in Rule 2.1 of Part A of the Rules.***
3. ***See the definition of “dealing” in Rule 2.1 of Part A of the Rules.***
4. ***If the economic exposure to changes in the price of securities is limited, for example, by virtue of a stop loss arrangement relating to a spread bet, full details must be given.***
5. ***See Rule 2.5(d) of Part A of the Rules.***
6. ***If details included in a disclosure under Rule 8 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.***

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

***References in these notes to “the Rules” are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2022.***

## IRISH TAKEOVER PANEL

DISCLOSURE UNDER RULE 8.2 OF THE IRISH TAKEOVER PANEL  
ACT, 1997, TAKEOVER RULES, 2022 OF DEALINGS BY OFFERORS,  
OFFEREEES OR PARTIES ACTING IN CONCERT WITH THEM FOR  
NON-DISCRETIONARY CLIENTS

## 1. KEY INFORMATION

<b>(a) Full name of person making disclosure:</b>	
<b>(b) Name of offeror/offeree in relation to whose relevant securities this form relates:</b>  <i>Use a separate form for each offeror/offeree</i>	
<b>(c) Status of person making the disclosure:</b>  <i>e.g. offeror, offeree, offeror/offeree concert party member (specify name of offeror/offeree)</i>	
<b>(d) Date dealing undertaken:</b>	

## 2. DEALINGS BY THE PERSON MAKING THE DISCLOSURE

(Note 1)

Where there have been dealings in more than one class of relevant securities of the offeror or offeree named in 1(b), copy table 2(a), (b), (c) or (d) (as appropriate) for each additional class of relevant security dealt in.

Dealings should be disclosed from the perspective of the non-discretionary clients.

The currency of all prices and other monetary amounts should be stated.

**(a) Purchases and sales****(i) Dealings aggregated by price per unit**

<b>Class of relevant security</b> (Note 2)	<b>Purchase/sale</b>	<b>Number of securities</b>	<b>Price per unit</b>

## (ii) Totals

Class of relevant security (Note 2)	Total purchased	Total sold

## (b) Cash-settled derivative transactions

Class of relevant security	Product description <i>e.g. CFD</i>	Nature of dealing <i>e.g. opening/ closing a long/ short position, increasing/ reducing a long/ short position</i>	Number of reference securities (Note 3)	Price per unit

## (c) Stock-settled derivative transactions (including options)

## (i) Writing, selling, purchasing or varying

Class of relevant security	Product description <i>e.g. call option</i>	Writing, purchasing, selling, varying etc.	Number of securities to which option relates (Note 3)	Exercise price per unit	Type <i>e.g. American, European etc.</i>	Expiry date	Option money paid/ received per unit

## (ii) Exercise

Class of relevant security	Product description <i>e.g. call option</i>	Exercising/ exercised against	Number of securities	Exercise price per unit

## (d) Other dealings (including transactions in respect of new securities)

Class of relevant security	Nature of dealing <i>e.g. subscription, conversion, exercise</i>	Details	Price per unit (if applicable)

Date of disclosure:	
Contact name:	
Telephone number:	

*Private disclosures under Rule 8.2 of the Rules must be emailed to the Panel at [admin@irishtakeoverpanel.ie](mailto:admin@irishtakeoverpanel.ie)*

## NOTES ON FORM 8.2

1. ***See the definition of “dealing” in Rule 2.1 of Part A of the Rules.***
2. ***See the definition of “relevant securities” in Rule 2.1 of Part A of the Rules.***
3. ***See Rule 2.5(d) of Part A of the Rules.***
4. ***If details included in a disclosure under Rule 8 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.***

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

***References in these notes to “the Rules” are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2022.***



## FORM 8.3

## IRISH TAKEOVER PANEL

**OPENING POSITION DISCLOSURE/DEALING DISCLOSURE UNDER  
RULE 8.3 OF THE IRISH TAKEOVER PANEL ACT, 1997, TAKEOVER  
RULES, 2022 BY PERSONS WITH INTERESTS IN RELEVANT  
SECURITIES REPRESENTING 1% OR MORE**

## 1. KEY INFORMATION

<b>(a) Full name of discloser</b>	
<b>(b) Owner or controller of interests and short positions disclosed, if different from 1(a)</b>  <i>The naming of nominee or vehicle companies is insufficient. For a trust, the trustee(s), settlor and beneficiaries must be named.</i>	
<b>(c) Name of offeror/offeree in relation to whose relevant securities this form relates</b>  <i>Use a separate form for each offeror/offeree</i>	
<b>(d) If an exempt fund manager connected with an offeror/offeree, state this and specify identity of offeror/offeree (Note 1)</b>	
<b>(e) Date position held/dealing undertaken</b>  <i>For an opening position disclosure, state the latest practicable date prior to the disclosure</i>	
<b>(f) In addition to the company in 1(c) above, is the discloser also making disclosures in respect of any other party to the offer?</b>  <i>If it is a cash offer or possible cash offer, state "N/A"</i>	<b>YES / NO / N/A</b>  <i>If YES, specify which:</i>

## 2. INTERESTS AND SHORT POSITIONS

*If there are interests and short positions to disclose in more than one class of relevant securities of the offeror or offeree named in 1(c), copy table 2 for each additional class of relevant security.*

**Interests and short positions in the relevant securities of the offeror or offeree to which the disclosure relates following the dealing (if any)**  
(Note 2)

Class of relevant security (Note 3)				
	Interests		Short positions	
	Number	%	Number	%
<b>(1) Relevant securities owned and/or controlled</b>				
<b>(2) Cash-settled derivatives</b>				
<b>(3) Stock-settled derivatives (including options) and agreements to purchase/sell</b>				
<b>Total</b>				

*All interests and all short positions should be disclosed.*

*Details of options including rights to subscribe for new securities and any open stock-settled derivative positions (including traded options), or agreements to purchase or sell relevant securities, should be given on a Supplemental Form 8.*

**3. DEALINGS (IF ANY) BY THE PERSON MAKING THE DISCLOSURE** (Note 4)

*Where there have been dealings in more than one class of relevant securities of the offeror or offeree named in 1(c), copy table 3(a), (b), (c) or (d) (as appropriate) for each additional class of relevant security dealt in.*

*The currency of all prices and other monetary amounts should be stated.*

**(a) Purchases and sales**

Class of relevant security	Purchase/sale	Number of securities	Price per unit (Note 5)

**(b) Cash-settled derivative transactions**

<b>Class of relevant security</b>	<b>Product description</b> <i>e.g. CFD</i>	<b>Nature of dealing</b> <i>e.g. opening/ closing a long/ short position, increasing/ reducing a long/ short position</i>	<b>Number of reference securities</b> (Note 6)	<b>Price per unit</b> (Note 5)

**(c) Stock-settled derivative transactions (including options)****(i) Writing, selling, purchasing or varying**

<b>Class of relevant security</b>	<b>Product description</b> <i>e.g. call option</i>	<b>Writing, purchasing, selling, varying etc.</b>	<b>Number of securities to which option relates</b> (Note 6)	<b>Exercise price per unit</b>	<b>Type</b> <i>e.g. American, European etc.</i>	<b>Expiry date</b>	<b>Option money paid/ received per unit</b>

**(ii) Exercise**

<b>Class of relevant security</b>	<b>Product description</b> <i>e.g. call option</i>	<b>Exercising/ exercised against</b>	<b>Number of securities</b>	<b>Exercise price per unit</b> (Note 5)

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

<b>Class of relevant security</b>	<b>Nature of dealing</b> <i>e.g. subscription, conversion, exercise</i>	<b>Details</b>	<b>Price per unit (if applicable)</b> (Note 5)

**4. OTHER INFORMATION**

**(a) Indemnity and other dealing arrangements**

<p><b>Details of any indemnity or option arrangement, or any agreement or understanding, formal or informal, relating to relevant securities which may be an inducement to deal or refrain from dealing entered into by the person making the disclosure and any party to the offer or any person acting in concert with a party to the offer.</b></p> <p><i>Irrevocable commitments and letters of intent should not be included. If there are no such agreements, arrangements or understandings, state "none"</i></p>

**(b) Agreements, arrangements or understandings relating to options or derivatives**

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

**(c) Attachments**

<b>Is a Supplemental Form 8 attached?</b>	<b>YES/NO</b>
<b>Date of disclosure</b>	
<b>Contact name</b>	
<b>Telephone number</b>	

*Public disclosures under Rule 8.3 of the Rules must be made to a Regulatory Information Service.*

## NOTES ON FORM 8.3

1. *See the definition of “connected fund manager” in Rule 2.2 of Part A of the Rules.*
2. *See the definition of “interest in a relevant security” in Rule 2.5 of Part A of the Rules and see Rule 8.6(a) and (b) of Part B of the Rules.*
3. *See the definition of “relevant securities” in Rule 2.1 of Part A of the Rules.*
4. *See the definition of “dealing” in Rule 2.1 of Part A of the Rules.*
5. *If the economic exposure to changes in the price of securities is limited, for example, by virtue of a stop loss arrangement relating to a spread bet, full details must be given.*
6. *See Rule 2.5(d) of Part A of the Rules.*
7. *If details included in a disclosure under Rule 8 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.*

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

*References in these notes to “the Rules” are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2022.*

## SUPPLEMENTAL FORM 8

## IRISH TAKEOVER PANEL

DISCLOSURE UNDER RULE 8.1, RULE 8.3, RULE 38.5(b) AND  
RULE 38.6 OF THE IRISH TAKEOVER PANEL ACT, 1997,  
TAKEOVER RULES, 2022DETAILS OF OPEN STOCK-SETTLED DERIVATIVE (INCLUDING  
OPTION) POSITIONS, AGREEMENTS TO PURCHASE OR SELL AND  
RIGHTS TO SUBSCRIBE FOR NEW SECURITIES

## 1. KEY INFORMATION

Full name of person making disclosure:	
Name of offeror/offeree in relation to whose relevant securities the disclosure relates:	

## 2. STOCK-SETTLED DERIVATIVES (INCLUDING OPTIONS)

Class of relevant security	Product description <i>e.g. call option</i>	Written or purchased	Number of securities to which option or derivative relates	Exercise price per unit	Type <i>e.g. American, European etc.</i>	Expiry date

## 3. AGREEMENTS TO PURCHASE OR SELL

Full details should be given so that the nature of the interest or position can be fully understood:

**4. RIGHTS TO SUBSCRIBE FOR NEW SECURITIES (INCLUDING DIRECTORS' AND OTHER EMPLOYEE OPTIONS)**

<b>Class of relevant security in relation to which subscription right exists:</b>	
<b>Details, including nature of the rights concerned and relevant percentages:</b>	

*It is not necessary to provide details on a Supplemental Form with regard to cash-settled derivatives.*

*The currency of all prices and other monetary amounts should be stated.*

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

***References in these notes to “the Rules” are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2022.***

## IRISH TAKEOVER PANEL

**DEALING DISCLOSURE UNDER RULE 38.5(a) OF THE IRISH  
TAKEOVER PANEL ACT, 1997, TAKEOVER RULES, 2022  
BY A CONNECTED EXEMPT PRINCIPAL TRADER WITH  
RECOGNISED INTERMEDIARY STATUS AND DEALING IN  
A CLIENT-SERVING CAPACITY**

## 1. KEY INFORMATION

<b>(a) Name of exempt principal trader:</b>	
<b>(b) Name of offeror/offeree in relation to whose relevant securities this form relates:</b>  <i>Use a separate form for each offeror/offeree</i>	
<b>(c) Name of the party to the offer with which exempt principal trader is connected:</b> (Note 1)	
<b>(d) Date dealing undertaken:</b>	
<b>(e) In addition to the company in 1(b) above, is the exempt principal trader also making disclosures in respect of any other party to the offer?</b>  <i>If it is a cash offer or possible cash offer, state "N/A"</i>	<b>YES / NO / N/A</b>  <i>If YES, specify which:</i>

## 2. DEALINGS BY THE EXEMPT PRINCIPAL TRADER (Note 2)

*Where there have been dealings in more than one class of relevant securities of the offeror or offeree named in 1(b), copy table 2(a), (b), (c) or (d) (as appropriate) for each additional class of relevant security dealt in.*

*The currency of all prices and other monetary amounts should be stated.*



## (a) Purchases and sales

Class of relevant security (Note 3)	Purchases/ sales	Total number of securities	Highest price per unit paid/ received	Lowest price per unit paid/ received

## (b) Cash-settled derivative transactions

Class of relevant security	Product description <i>e.g. CFD</i>	Nature of dealing <i>e.g. opening/closing a long/short position, increasing/reducing a long/short position</i>	Number of reference securities (Note 4)	Price per unit (Note 5)

## (c) Stock-settled derivative transactions (including options)

## (i) Writing, selling, purchasing or varying

Class of relevant security	Product description <i>e.g. call option</i>	Writing, purchasing, selling, varying etc.	Number of securities to which option relates (Note 4)	Exercise price per unit	Type <i>e.g. American, European etc.</i>	Expiry date	Option money paid/received per unit

## (ii) Exercise

Class of relevant security	Product description <i>e.g. call option</i>	Exercising/exercised against	Number of securities	Exercise price per unit (Note 5)

## (d) Other dealings (including transactions in respect of new securities)

Class of relevant security	Nature of dealing <i>e.g. subscription, conversion, exercise</i>	Details	Price per unit (if applicable) (Note 5)

**3. OTHER INFORMATION**

**(a) Indemnity and other dealing arrangements**

<p><b>Details of any indemnity or option arrangement, or any agreement or understanding, formal or informal, relating to relevant securities which may be an inducement to deal or refrain from dealing entered into by the exempt principal trader making the disclosure and any party to the offer or any person acting in concert with a party to the offer:</b></p> <p><i>Irrevocable commitments and letters of intent should not be included. If there are no such agreements, arrangements or understandings, state "none"</i></p>

**(b) Agreements, arrangements or understandings relating to options or derivatives**

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

<b>Date of disclosure:</b>	
<b>Contact name:</b>	
<b>Telephone number:</b>	

*Public disclosures under Rule 38 of the Rules must be made to a Regulatory Information Service.*

## NOTES ON FORM 38.5(a)

1. *See the definition of “connected principal trader” in Rule 2.2 of Part A of the Rules.*
2. *See the definition of “dealing” in Rule 2.1 of Part A of the Rules.*
3. *See the definition of “relevant securities” in Rule 2.1 of Part A of the Rules.*
4. *See Rule 2.5(d) of Part A of the Rules.*
5. *If the economic exposure to changes in the price of securities is limited, for example, by virtue of a stop loss arrangement relating to a spread bet, full details must be given.*
6. *If details included in a disclosure under Rule 38 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.*

*For full details of disclosure requirements, see Rules 8 and 38 of the Rules. If in doubt, consult the Panel.*

*References in these notes to “the Rules” are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2022.*

## FORM 38.5(b) &amp; 38.6 (EPT/NON-RI)

## IRISH TAKEOVER PANEL

**OPENING POSITION DISCLOSURE/DEALING DISCLOSURE  
UNDER RULE 38.5(b) AND RULE 38.6 OF THE IRISH TAKEOVER  
PANEL ACT, 1997, TAKEOVER RULES, 2022 BY A CONNECTED  
EXEMPT PRINCIPAL TRADER WITHOUT RECOGNISED  
INTERMEDIARY STATUS, OR WITH RECOGNISED INTERMEDIARY  
STATUS BUT NOT DEALING IN A CLIENT-SERVING CAPACITY**

## 1. KEY INFORMATION

<b>(a) Name of exempt principal trader:</b>	
<b>(b) Name of offeror/offeree in relation to whose relevant securities this form relates:</b>  <i>Use a separate form for each offeror/offeree</i>	
<b>(c) Name of the party to the offer with which exempt principal trader is connected:</b> (Note 1)	
<b>(d) Date position held/dealing undertaken:</b>  <i>For an opening position disclosure, state the latest practicable date prior to the disclosure</i>	
<b>(e) In addition to the company in 1(b) above, is the exempt principal trader also making disclosures in respect of any other party to the offer?</b>  <i>If it is a cash offer or possible cash offer, state "N/A"</i>	<b>YES / NO / N/A</b>  <i>If YES, specify which:</i>

## 2. INTERESTS AND SHORT POSITIONS

*If there are interests and short positions to disclose in more than one class of relevant securities of the offeror or offeree named in 1(b), copy table 2 for each additional class of relevant security.*

**Interests and short positions in the relevant securities of the offeror or offeree to which the disclosure relates following the dealing (if any)**  
(Note 2)

Class of relevant security: (Note 3)				
	Interests		Short positions	
	Number	%	Number	%
(1) Relevant securities owned and/or controlled:				
(2) Cash-settled derivatives:				
(3) Stock-settled derivatives (including options) and agreements to purchase/sell:				
<b>Total:</b>				

*All interests and all short positions should be disclosed.*

*Details of options including rights to subscribe for new securities and any open stock-settled derivative positions (including traded options), or agreements to purchase or sell relevant securities, should be given on a Supplemental Form 8.*

**3. DEALINGS (IF ANY) BY THE EXEMPT PRINCIPAL TRADER**  
(Note 4)

*Where there have been dealings in more than one class of relevant securities of the offeror or offeree named in 1(b), copy table 3(a), (b), (c) or (d) (as appropriate) for each additional class of relevant security dealt in.*

*The currency of all prices and other monetary amounts should be stated.*

**(a) Purchases and sales**

Class of relevant security	Purchases/sales	Total number of securities	Highest price per unit paid/received	Lowest price per unit paid/received

**(b) Cash-settled derivative transactions**

<b>Class of relevant security</b>	<b>Product description</b> <i>e.g. CFD</i>	<b>Nature of dealing</b> <i>e.g. opening/closing a long/short position, increasing/reducing a long/short position</i>	<b>Number of reference securities</b> (Note 5)	<b>Price per unit</b> (Note 6)

**(c) Stock-settled derivative transactions (including options)**

**(i) Writing, selling, purchasing or varying**

<b>Class of relevant security</b>	<b>Product description</b> <i>e.g. call option</i>	<b>Writing, purchasing, selling, varying etc.</b>	<b>Number of securities to which option relates</b> (Note 5)	<b>Exercise price per unit</b>	<b>Type</b> <i>e.g. American, European etc.</i>	<b>Expiry date</b>	<b>Option money paid/ received per unit</b>

**(ii) Exercise**

<b>Class of relevant security</b>	<b>Product description</b> <i>e.g. call option</i>	<b>Exercising/ exercised against</b>	<b>Number of securities</b>	<b>Exercise price per unit</b> (Note 6)

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

<b>Class of relevant security</b>	<b>Nature of dealing</b> <i>e.g. subscription, conversion, exercise</i>	<b>Details</b>	<b>Price per unit (if applicable)</b> (Note 6)

#### 4. OTHER INFORMATION

##### (a) Indemnity and other dealing arrangements

**Details of any indemnity or option arrangement, or any agreement or understanding, formal or informal, relating to relevant securities which may be an inducement to deal or refrain from dealing entered into by the exempt principal trader making the disclosure and any party to the offer or any person acting in concert with a party to the offer:**

*Irrevocable commitments and letters of intent should not be included. If there are no such agreements, arrangements or understandings, state "none"*

##### (b) Agreements, arrangements or understandings relating to options or derivatives

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

##### (c) Attachments

<b>Is a Supplemental Form 8 attached?</b>	<b>YES/NO</b>
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<b>Date of disclosure:</b>	
<b>Contact name:</b>	
<b>Telephone number:</b>	

*Public disclosures under Rule 38 of the Rules must be made to a Regulatory Information Service.*

NOTES ON FORM 38.5(b) AND 38.6

1. *See the definition of “connected principal trader” in Rule 2.2 of Part A of the Rules.*
2. *See the definition of “interest in a relevant security” in Rule 2.5 of Part A of the Rules and see Rule 8.6(a) and (b) of Part B of the Rules.*
3. *See the definition of “relevant securities” in Rule 2.1 of Part A of the Rules.*
4. *See the definition of “dealing” in Rule 2.1 of Part A of the Rules.*
5. *See Rule 2.5(d) of Part A of the Rules.*
6. *If the economic exposure to changes in the price of securities is limited, for example, by virtue of a stop loss arrangement relating to a spread bet, full details must be given.*
7. *If details included in a disclosure under Rule 38 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.*

*For full details of disclosure requirements, see Rules 8 and 38 of the Rules. If in doubt, consult the Panel.*

*References in these notes to “the Rules” are to the Irish Takeover Panel Act, 1997, Takeover Rules, 2022.*



**APPENDIX 4**

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## APPLICATION OF THE TAKEOVER RULES TO TAKEOVER SCHEMES

The Application shall have effect subject to and in accordance with the following provisions of this Appendix.

### SECTION 1. CERTAIN RULES NOT APPLICABLE TO TAKEOVER SCHEMES

The following rules shall not apply to takeover schemes:

Rule 5.2(a)(iii)(3);

Rules 10 and 11.1(e);

Rules 17, 18 and 22;

Rules 24.1(a), 24.1(b), 24.7, 24.14 and 25.1(a);

Rules 31.1 to 31.4(a) (inclusive) and 31.5 to 31.10 (inclusive);

Rules 32.1(a), 32.2(b)(ii), 32.2(f), 32.3, 33 and 34; and

Appendix 1

*Note: when it is proposed to implement a partial offer by a scheme of arrangement pursuant to section 450 of the Companies Act, 2014, the Panel will have jurisdiction (with the High Court) if the transaction constitutes a takeover.*

### SECTION 2. ADAPTATION OF CERTAIN DEFINITIONS AND EXPRESSIONS

For the purpose of the Application:

- (1) a relevant company:
  - (i) in respect of which a takeover scheme has been or is intended to be proposed, or
  - (ii) in respect of which, or in connection with which, a person does any act in contemplation of proposing a takeover scheme in respect of that company(in Rule 41 and in this Appendix referred to as the “**acquiree**”) shall be treated as if it were the offeree;
- (2) a person (including persons acting in concert) who:
  - (i) acquires or will or may acquire control of the relevant company concerned consequent upon the takeover scheme taking effect, or
  - (ii) does any act in contemplation of acquiring control of the relevant company concerned consequent upon a takeover scheme taking effect(in Rule 41 and in this Appendix referred to as the “**acquirer**”) shall be treated as if it were the offeror;

(3) the expression **“acceptance of an offer”**, in relation to a takeover scheme, shall be construed as if it referred to the casting by a member of the acquiree of his or her vote in favour of the scheme resolution, and cognate words and expressions shall be construed accordingly;

(4) the definition of **“course of the offer”** in Rule 2.1 of Part A, in relation to a takeover scheme, shall be construed as if paragraphs (i) and (ii) were replaced by the following paragraphs:

“(i) where, in the case of a proposed or possible takeover scheme, the acquirer or the acquiree announces that the scheme will not be proposed, the time of that announcement;

(ii) the time at which the acquiree announces that the scheme has taken effect or that it has lapsed or been withdrawn; and”;

(5) the expression **“first closing date of the offer”** in Rule 12(b)(i), in relation to a takeover scheme, shall be construed to mean the date of the scheme meeting;

(6) the expressions **“offer document”** and **“first response circular”**, in relation to a takeover scheme, shall each be construed as if it referred to the scheme circular;

(7) the definition of **“offer period”** in Rule 2.1 of Part A, in relation to a takeover scheme, shall be construed as if paragraphs (1) and (2) were replaced by the following paragraphs:

“(1) where, in the case of a proposed or possible takeover scheme, the acquirer or the acquiree announces that the scheme will not be proposed, the time of that announcement; and

(2) the time at which the acquiree announces that the scheme has taken effect or that it has lapsed or been withdrawn;”;

(8) the expression **“unconditional as to acceptances”**, in relation to a takeover scheme, shall be construed as if it meant that the acquiree has announced that the requisite majority of the shareholders or class of shareholders of the acquiree has voted in favour of the scheme resolution at the scheme meeting; and

(9) the expression **“unconditional in all respects”**, in relation to a takeover scheme, shall be construed as if it meant that the scheme has taken effect.

### SECTION 3. ADAPTATION AND REPLACEMENT OF CERTAIN RULES

For the purposes of the Application:

(1) the following paragraph shall be deemed to replace paragraph (d) of Rule 2.6:

“When a firm intention to propose a takeover scheme has been announced pursuant to Rule 2.7 and it has been announced that a publicly identified potential offeror might make a competing offer (whether that announcement was made prior to or following the announcement of the takeover scheme), unless the Panel consents otherwise the potential offeror shall, by no later than 5.00pm on the seventh day prior to the date of the related general meeting either:

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or
- (ii) announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies.”

(2) the following paragraph shall be deemed to replace paragraph (e) of Rule 2.6:

“When a firm intention to propose a takeover scheme has been announced pursuant to Rule 2.7 and the offeree subsequently refers to the existence of a potential competing offeror which has not been identified, unless the Panel consents otherwise the potential competing offeror so referred to shall, by no later than 5.00pm on the seventh day prior to the date of the related general meeting either:

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or
- (ii) confirm to the offeree that it does not intend to make an offer, in which case the offeree must promptly announce that fact and the potential competing offeror will be treated as if it had then made a statement to which Rule 2.8 applies.”

(3) the following paragraph shall be deemed to be inserted after Rule 2.7(d):

“(e) An announcement of a firm intention to propose a takeover scheme shall not be treated as an announcement pursuant to Rule 2.7 unless it is issued jointly by the acquirer and the acquiree.”;

(4) the following paragraph shall be deemed to replace paragraph (e) of Rule 11.1:

“(e) In the case of a takeover scheme, the obligation to make cash available under paragraph (a) shall be satisfied if at the time at which the acquisition giving rise to such obligation was made, shareholders of the acquiree were entitled to elect for cash consideration at a price per share not less than that required by paragraph (a) (even if such right of election subsequently ceases to be available).”;

- (5) the following rule shall be deemed to replace Rule 17:

**“RULE 17. ANNOUNCEMENTS FOLLOWING KEY EVENTS IN A TAKEOVER SCHEME**

(a) At the earliest practicable time after the Court makes an order directing that a scheme meeting be convened and, in any event, by no later than 8.00 a.m. on the next following business day, the acquiree shall make an appropriate announcement in accordance with Rule 30.1, which announcement shall state the date, time and place of the scheme meeting and any related general meeting.

(b) At the earliest practicable time after the acquiree sends a scheme circular to its shareholders or a class of its shareholders and, in any event, by no later than 8.00 a.m. on the next following business day, it shall make an appropriate announcement in accordance with Rule 30.1, which announcement shall state the fact that the scheme circular has been so sent and the date, time and place of the scheme meeting and any related general meeting.

(c) At the earliest practicable time after the results of the scheme meeting and of any related general meeting are known and, in any event, by no later than 8.00 a.m. on the next following business day, the acquiree shall make an announcement in accordance with Rule 30.1 stating whether the resolutions concerned were passed by the requisite majorities and giving details of the voting results in relation to the meetings, including:

(i) in the case of a related general meeting, if a poll was taken, the respective numbers of shares of each class which were voted for and against the resolutions concerned and the respective percentages of the shares of that class voted which those numbers represent; and

(ii) in the case of the scheme meeting:

(1) (where section 1087D of the Companies Act 2014 does not apply) the respective numbers of shareholders of each class who voted for and against the resolution to approve the scheme and the respective percentages of the voting shareholders of that class which those numbers represent;

(2) the respective numbers of shares of each class which were voted for and against that resolution and the respective percentages of the shares voted which those numbers represent; and

(3) the respective percentages of the issued shares of each class which the shares of that class voted for and against that resolution represent.

(d) At the earliest practicable time after the Court sanction hearing and, in any event, by no later than 8.00 a.m. on the next following business day, the acquiree shall make an announcement in accordance with Rule 30.1, which announcement shall state:

(i) whether the Court has sanctioned the takeover scheme;

(ii) if the Court has sanctioned the scheme, details of any modification of or addition made to the scheme and of any condition approved or imposed by the Court;

(iii) if the Court has sanctioned the scheme, a summary of any outstanding conditions, the date on which those conditions are expected to be satisfied, and the date on which the scheme is expected to take effect; and

(iv) if the Court has not sanctioned the scheme, the reasons therefor and the consequences for the scheme, including whether the scheme has lapsed.

(e) At the earliest practicable time after a takeover scheme takes effect and, in any event, by no later than 8.00 a.m. on the next following business day, the acquiree shall make an announcement in accordance with Rule 30.1, which announcement shall state the date on which the scheme took effect and the date on which it is expected that the acquiree will send to shareholders of the acquiree the consideration due to them under the scheme.”

(6) the following paragraph shall be deemed to replace paragraph (a) of Rule 24.1:

“The acquiree and acquirer concerned shall announce pursuant to Rule 2.7 their firm intention to propose a takeover scheme before they initiate or take any other step in any proceedings in the Court under section 450 of the Companies Act, 2014, or otherwise in connection with the scheme.”;

(7) the following paragraph shall be deemed to replace paragraph (b) of Rule 24.1:

“(a) Except with the consent of the Panel and subject to Rule 2.11, the acquiree and the acquirer shall send the scheme circular to the shareholders of the acquiree within 28 days after the date of the announcement of a firm intention to propose a takeover scheme.”;

(8) the following paragraph shall be deemed to replace Rule 31.8:

“Except with the consent of the Panel, if a takeover scheme takes effect the consideration due to the shareholders of the acquiree shall be posted within 14 days after the date on which the scheme took effect. This requirement shall be included in the terms of the scheme.”;

(9) the following rule shall be deemed to replace Rule 31.10:

#### **“31.10. RETURN OF DOCUMENTS OF TITLE**

If a takeover scheme lapses or is withdrawn, or if a shareholder withdraws his election for a particular form of consideration, the acquirer shall ensure that all documents of title and other documents lodged with any form of election are returned as soon as practicable (and in any event within 14 days after the lapse or withdrawal), and the acquiree’s receiving agent shall immediately give instructions for the release of securities held in escrow.”;

(10) the following paragraph shall be deemed to replace paragraph (a) of Rule 32.1:

“(a) If a takeover scheme is revised the acquiree and the acquirer shall send to the shareholders of the acquiree a revised scheme circular, drawn up in accordance with Rules 24, 25 and 27. Except with the consent of the Panel, a revised scheme circular shall not be sent either:

- (i) during the 14 days ending on the date of the scheme meeting or any related general meeting (or on any later date to which any such meeting is adjourned); or
- (ii) following the scheme meeting or any related general meeting;

nor shall an acquirer place itself in a position in which it would be required to revise the scheme during either of those periods.”;

- (11) Rule 32.1(c) shall be deemed to apply *mutatis mutandis* where takeover schemes, or a scheme and an offer, are competing with each other;
- (12) Rule 35 shall be construed as if references in that Rule to an offer (not being a partial offer) were references to a takeover scheme (not being a partial takeover scheme);
- (13) the following rule shall be deemed to replace Rule 36.1:  
“Except with the consent of the Panel, a person shall not propose a partial takeover scheme in respect of a relevant company.”; and
- (14) Rule 36.2 shall be construed as if references in that rule to a partial offer were references to a partial takeover scheme.

#### **SECTION 4. ADDITIONAL RULES RELATING TO TAKEOVER SCHEMES**

For the purposes of the Application, the following additional rules shall apply:

##### **(1) MANDATORY OFFERS**

An obligation to make an offer under Rule 9 or Rule 37 may not be satisfied by way of a scheme of arrangement.

##### **(2) EARLIEST DATE FOR SCHEME MEETING**

Except with the consent of the Panel, the acquiree shall not convene the scheme meeting or any related general meeting for a date earlier than the 21st day following the date on which the scheme circular is sent.

##### **(3) CHANGES TO THE EXPECTED SCHEME TIMETABLE**

(a) The acquiree shall promptly announce in accordance with Rule 30.1 any adjournment of the scheme meeting or any related general meeting or the court sanction hearing and any decision by the board of the acquiree to propose such an adjournment. If either meeting or the hearing is adjourned to a specified date, the announcement shall include the relevant details. If either meeting or the hearing is adjourned without a date for the adjourned meeting being specified at the same time, the acquiree shall promptly announce the new date when it has been set.



(b) The acquirer or the acquiree (as appropriate) shall promptly announce in accordance with Rule 30.1 any other change to the expected timetable of events set out in the scheme circular.

(c) In all of the circumstances referred to above, the acquirer or the acquiree (as appropriate) shall consult the Panel as to whether notice of the adjournment or other change to the expected timetable should also be sent to the shareholders of the acquiree.

**(4) ALTERNATIVE CONSIDERATION**

(a) If a takeover scheme permits shareholders to elect to receive any alternative form of consideration, or to elect, subject to the elections of others, to vary the proportion in which they receive different forms of consideration, the entitlement of shareholders to make such elections may not be closed off or withdrawn before the scheme meeting.

(b) A shareholder who has elected under a takeover scheme to receive a particular form of consideration in respect of any of his or her shares shall be entitled to withdraw his or her election, provided that such entitlement may be shut off not earlier than one week prior to the date on which the court sanction hearing is originally proposed to be held or, if for any reason the court sanction hearing is rearranged for a later date, not earlier than one week prior to that later date.

## TAKEOVER RULES

### INTRODUCTION

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

*The Irish Takeover Panel Act, 1997, Takeover Rules, 2022 (the “Rules”) comprise rules made by the Irish Takeover Panel (the “Panel”) under the powers granted to the Panel by the Irish Takeover Panel Act, 1997, as amended (the “Act”) and by the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, as amended (the “Regulations”). This Introduction provides some information on the Panel and its operations, but neither it nor the Notes on the Rules nor the footnotes to certain Rules constitute a part of the Rules as such nor do they constitute a legal interpretation of the Rules.*

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

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

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

*concerned with issues such as competition and mergers policies, which are regulated under different legislation.*

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

## **2. RESPONSIBLE PARTIES UNDER THE RULES**

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

## **3. ENFORCEMENT OF THE RULES**

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

*The Act also gives the Panel power to enquire into the conduct of any person where it has reasonable grounds for believing that a contravention of the General Principles or the Rules has occurred or may occur. Following*

*such an enquiry, the Panel may advise, admonish or censure such person in relation to his or her conduct, and may do so either privately or publicly.*

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

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

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

##### *(a) Takeover Bids for Directive Companies*

*The Regulations (and the Act, subject to the Regulations) and the Rules apply to takeover bids for companies a bid in respect of which the Panel has jurisdiction to supervise by virtue of Regulation 6 of the Regulations (“Directive Companies”).*

##### *Directive Companies*

*A Directive Company is a company which:*

- (i) has its registered office in the State and whose transferable voting securities are admitted to trading on a regulated market in the State;*
- (ii) has its registered office in the State and whose transferable voting securities are admitted to trading on a regulated market in one or more Member States (i.e. a Member State of the European Communities or an European Economic Area state) other than in the State;*
- (iii) has its registered office in another Member State and whose transferable voting securities are admitted to trading solely on a regulated market in the State; or*
- (iv) has its registered office in another Member State and whose transferable voting securities are admitted to trading on regulated markets in more than one Member State, excluding that other Member State but including the State, if ;*
  - (1) the transferable voting securities were first admitted to trading on a regulated market in the State; or*
  - (2) (subject to (3)) the transferable voting securities have been simultaneously admitted to trading on regulated markets in more than one Member State, including the State, and the company determines in accordance with Article 4(2)(c) of the Directive that the Panel shall be the competent authority to supervise the takeover bid; or*

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

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

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

- (i) *in cases falling under paragraph (ii) above, the Rules and other relevant Irish legislation will apply in respect of matters relating to the information to be provided to the employees of the company and matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a takeover bid, as well as the conditions under which the board of the company may undertake any action which might result in frustration of the takeover bid; and*
- (ii) *in cases falling under paragraph (iii) or (iv) above, the Rules will apply in respect of matters relating to the consideration offered in the case of a takeover bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the takeover bid.*

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

#### *Takeover Bids*

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

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

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

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

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

*(b) Takeovers not being “Takeover bids” and “Other Relevant Transactions” in respect of Relevant Companies*

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

#### *Relevant Companies*

*Section 2(a) and (b) of the Act, includes as a “relevant company” any public limited company or other body corporate incorporated in the State any of whose securities are authorised for trading (or have been so authorised within five years prior to the relevant proposal) on a market regulated by a “recognised stock exchange” (Euronext Dublin has been prescribed as such).*

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

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

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

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

*In cases where securities of an offeree (including depositary receipts representing such securities) are held by persons resident in other jurisdictions or are quoted on markets in other jurisdictions, the offeree and the offeror should each consult the Panel in relation to any applicable legal or regulatory requirements in those jurisdictions which may affect the application of the Rules or compliance with them.*

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

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

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

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

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

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

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

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

## 5. THE PANEL

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

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

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

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

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

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

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

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

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

### (b) *The Panel Executive*

*The Panel works on a day to day basis through the office of the Director General (“the Executive”), which deals with the general administration of the Panel and the Rules, including consideration of queries and submissions which do not require consideration by the Board of the Panel. The Executive is responsible for monitoring dealings in the shares of relevant companies,*



*and is available for consultation and to give guidance before and during takeover transactions. However, the statutory powers of the Panel to make rulings and give directions pursuant to the Act are discharged by the Board.*

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

*(c) Confidentiality and Disclosures to other Persons*

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

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

*(d) Annual Report*

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

## **6. PROCEDURES**

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

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

*(b) Panel Decisions*

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

*The Panel is entitled under the Act to require any party to a takeover or other relevant transaction to disclose to it any information which it requires for the performance of its functions. The Panel expects full and prompt cooperation*

*from those from whom it requires information so that its decisions may be properly informed and given as speedily as possible.*

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

*(c) Hearings by the Panel*

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

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

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

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

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

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

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

(d) *Enquiries*

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

**7. THE HIGH COURT**(a) *Panel applications*

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

(b) *Judicial review*

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

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

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

**8. THE GENERAL PRINCIPLES**

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

**PRINCIPLES APPLICABLE TO THE CONDUCT OF TAKEOVERS, ETC.**

1. *All holders of the securities of an offeree of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.*
2. *The holders of the securities of an offeree must have sufficient time and information to enable them to reach a properly informed decision*

*on the offer; where it advises the holders of securities, the board of the offeree must give its views on the effects of implementation of the offer on employment, conditions of employment and the locations of the offeree's places of business.*

3. *The board of an offeree must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the offer.*
4. *False markets must not be created in the securities of the offeree, of the offeror or of any other company concerned by the offer in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.*
5. *An offeror must announce an offer only after ensuring that he or she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.*
6. *An offeree must not be hindered in the conduct of its affairs for longer than is reasonable by an offer for its securities.*
7. *A substantial acquisition of securities (whether such acquisition is to be effected by one transaction or a series of transactions) shall take place only at an acceptable speed and shall be subject to adequate and timely disclosure.*

**NOTES ON THE TAKEOVER RULES**

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

## NOTES ON PART A - PRELIMINARY RULES

## NOTES ON RULE 2

## NOTES ON RULE 2.1

## 1. “Acting in concert”

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

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

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

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

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

(a) *Break up of concert parties*

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

(b) *Underwriting arrangements*

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

(c) *Companies Act, 2014*

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

(d) *Standstill agreements*

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

- (i) accepting an offer for the company's shares at any stage; or*
- (ii) agreeing to accept any offer for the company's shares either before or after its announcement.*

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

(e) *Consortium offers*

*Investors in a consortium (for example, through a vehicle company formed for the purpose of making an offer) will normally be treated as acting in concert with the offeror. If such an investor is part of a larger organisation, the Panel should be consulted to establish which other parts of the organisation will also be regarded as acting in concert. (See the definitions of “connected fund managers” and “connected principal traders” in Rule 2.2 and see also Rule 7.2 of Part B regarding discretionary fund managers.)*

(f) *Pension Schemes*

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

(g) *Sub-contracted fund managers*

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

(h) *Irrevocable commitments*

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

- (i) *the terms of the irrevocable commitment give the offeror or the offeree (as the case may be) either the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to the shares or general control of them (other than an undertaking to vote the relevant shares in accordance with the instructions of the offeror that is limited to the course of the offer or, if earlier, until the irrevocable commitment otherwise ceases to be*



*binding and is limited to matters which relate to ensuring that the offer or takeover scheme is successful).; or*

- (ii) *the person acquires an interest in more shares.*

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

## 2. “Company”

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

## 3. “Control”

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

## 4. “Dealing”

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

## 5. “Derivatives”

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

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

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

- (b) *The effect of a principal trader or fund manager having exempt status is that the presumption of concertedness in Rule 3.3(b)(v) of*

*Part A will not apply. However, the principal trader or fund manager will still be regarded as connected with the offeror or offeree, as appropriate. Connected exempt principal traders, but not connected exempt fund managers, must comply with Rule 38 of Part B. Connected exempt principal traders and connected exempt fund managers must comply with the relevant provisions of Rule 8 of Part B.*

- (c) *When a principal trader or fund manager is connected with the offeror or the offeree, exempt status is relevant only where the sole reason for the connection is that the principal trader or fund manager is controlled by, controls or is under the same control as a financial or other professional adviser (including a stockbroker) acting in relation to the offer for the offeror or (as the case may be) the offeree.*
- (d) *In appropriate cases, a trading entity may be granted exempt status on an ad hoc basis subject to the satisfaction of certain conditions. References in the Rules to exempt principal traders include persons granted such ad hoc exempt status, for so long as the grant of such exempt status remains valid and subject always to the conditions on which such ad hoc exempt status is granted in any particular case.*

#### 7. “Offer period”

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

#### 8. “Offeree”

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

- (a) *any securities of which are the subject of an offer that has been made or is intended or required to be made, or*
- (b) *in respect of which, or in connection with which, a person does any act in contemplation of making an offer to holders of securities in that company”.*

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

- (i) *any transferable voting securities of which are the subject of a bid that has been made or is intended or required to be made, or*
- (ii) *in respect of which, or in connection with which, a person does any act in contemplation of making a bid to holders of transferable voting securities of that company”.*

#### 9. “Offeror”

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

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

10. *“Quantified Financial Benefits Statement”*

*Where, in competition with an offer or possible offer, an offeree announces that it has agreed terms on which it intends to sell all or substantially all of the company’s assets (excluding cash and cash equivalents) and that it intends to return to shareholders all or substantially all of the company’s cash balances (including the proceeds of any asset sale), a statement by the offeree quantifying the cash sum expected to be paid to shareholders (either as a specific amount or as a range) will be treated as a quantified financial benefits statement. See also Rule 4.6 of Part B.*

11. *“Recognised intermediary”*

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

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

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

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

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

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

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

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

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

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

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

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

## 12. "Relevant company"

*In summary, a "relevant company" is defined in the Act as: (i) any public limited company or other body corporate incorporated in the State any of whose securities are authorised for trading (or have been so authorised within five years prior to the relevant proposal) on a market regulated by a "recognised stock exchange" (Euronext Dublin has been prescribed as such) and (ii) a public limited company incorporated in the State, any securities of which are authorised to be traded, or have been so authorised within*

five years prior to the relevant proposal, on the London Stock Exchange, the New York Stock Exchange or Nasdaq. The Minister may prescribe other public limited companies to be relevant companies. A company will not constitute a relevant company if the only category of its securities currently or within the preceding five years authorised for trading on such a stock exchange or market is non-voting debentures or bonds.

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

### 13. “Relevant securities”

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

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

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

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

## 14. “Reverse takeover transaction”

See definition in Rule 2.1(a).

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

## 15. “Rights” over voting securities

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

## 16. “Security”

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

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

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

See also Note 9 on Rule 9.1 of Part B.

## 17. “Voting right”

*The Act defines a “voting right”, in relation to a company, as “a right exercisable for the time being to cast, or to control the casting of, a vote at general meetings of members of the company, not being such a right that is exercisable only in special circumstances”. Allotted but unissued shares do not, pending their issue, confer voting rights. However, for the*

*purposes of some Rules, such as Rules 5.1 and 10.1 of Part B, allotted but unissued shares which will upon issue carry voting rights are deemed to have been issued.*

18. *“Voting security”*

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

NOTES ON RULE 2.5

1. *Interests of two or more persons*

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

2. *Proxies and corporate representatives*

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

3. *Irrevocable voting commitments*

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

4. *Security interests*

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

5. *Other statutory or regulatory provisions*

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

6. *Gross interests*

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

- (a) those positions are in respect of the same class of relevant security;*
- (b) those positions are in respect of the same investment product;*
- (c) except for the number of securities in question, the terms of those positions are the same, for example, as to strike price and, if appropriate, exercise period; and*
- (d) the counterparty to those positions is the same in each case.*

7. *Securities borrowing/lending and sale/repurchase transactions*

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

8. *Rules that relate to “interests in relevant securities”*

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



**NOTE ON RULE 3****NOTE ON RULE 3.3***Presumptions of concertedness – associated company*

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

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

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

**NOTE ON RULE 4**

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

**NOTES ON PART B – PRINCIPAL RULES****NOTES ON RULE 2***NOTES ON RULE 2.1**Warning clients*

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

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

*NOTES ON RULE 2.2**1. Anomalous movements*

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

*2. An Approach*

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

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

*The Panel will not normally require an announcement to be made under Rules 2.2(c) and (d) if, at the time the rumour and speculation and/or anomalous movement in the offeree's share price occurred, the potential*

*offeror had withdrawn its approach and/or ceased considering the possibility of making an offer unless the Panel considers that an announcement is necessary to avoid the creation of a false market.*

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

#### 4. Rule 2.2(e)

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

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

#### 5. Rule 2.2(f)

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

#### 6. Strategic Reviews

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

#### 7. Consultation

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

8. *Rumour and speculation during an offer period*

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

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

9. *Rule 12(b)(iii) and (iv)(1)*

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

**NOTE ON RULE 2.3**

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

**NOTES ON RULE 2.4**

1. *Responsibility statements*

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

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

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

3. *Indemnity and other dealing arrangements*

*Where the offeree an offeror or any person acting in concert with the offeree or an offeror enters into any dealing arrangement of the kind referred to in Rule 8.7 before the start of the offer period or the announcement that first*

*identifies the offeror, details of the arrangement must be included in the announcement that commences the offer period or (as the case may be) first identifies the offeror.*

#### 4. *Formal sale process*

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

### NOTES ON RULE 2.5

#### 1. *Approximate value*

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

#### 2. *Right to vary form/mix of consideration*

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

#### 3. *Dividends*

*Where an offeror has made a statement to which Rule 2.5(c)(iii) applies and a dividend (or other distribution) is subsequently paid or becomes payable by the offeree to offeree shareholders, the offeror will be required to reduce the offer consideration by an amount equal to the dividend (or other distribution) so that the overall value receivable by the offeree shareholders remains the same, unless, and to the extent that, the offeror has stated that offeree shareholders will be entitled to receive all or part of a specified dividend (or other distribution) in addition to the offer consideration.*

#### 4. *Pre-conditions*

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

- (a) clearly state whether the pre-condition must be satisfied before an offer can be made or whether the pre-condition is waivable; and*
- (b) include a prominent warning to the effect that the announcement does not amount to an announcement of a firm intention to make an*

*offer and that, accordingly, there can be no certainty that any offer will be made even if the pre-condition is satisfied or waived.*

5. *Consequences of a Firm Announcement*

*See Rule 2.11.*

**NOTES ON RULE 2.6**

1. *Deadline extensions*

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

2. *Formal Sale Process*

*Where, prior to an offeror having announced a firm intention to make an offer, the board of the offeree announces that it is seeking one or more potential offerors for the offeree by means of a formal sale process, the Panel will normally grant a dispensation from the requirements of Rules 2.4(b) and (c) and Rule 2.6(a), such that any potential offeror which agrees with the offeree to participate in that process would not be required to be publicly identified under Rule 2.4(b) or (c) and would not be subject to the 42 day deadline referred to in Rule 2.6(a), for so long as it is participating in that process. Any such dispensation would be without prejudice to the application of Rules 2.2 and Rule 8. A potential offeror (and persons acting in concert with it) that is a participant in a formal sale process announced by the offeree must disclose any dealings in relevant securities of the offeree after the time at which it becomes a participant in the formal sale process in accordance with Rule 8.1(c) and, recognising that such announcement under Rule 8.1(c) will identify the offeror as such, the offeror must, at the same time as or before any such dealing disclosure, also make an announcement that it is a participant in the formal sale process (see Note 12 to Rule 8 and also Rule 7.1(b) and Note 4 on Rule 7 for when an immediate announcement will be required). The announcement must include a summary of the provisions of Rule 8.*

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

- (a) including the phrase “formal sale process” in the heading;*
- (b) stating that a formal sale process is being commenced;*
- (c) explaining how the formal sale process will be conducted and including an indicative timetable (or a commitment by the offeree to make a further announcement in relation to the timetable for the formal sale process);*

- (d) *confirming whether the offeree is in discussions with, or is in receipt of an approach from, any potential offeror at the date of the announcement; and*
- (e) *explaining that the Panel has granted a dispensation from Rules 2.4(b) and (c) and Rule 2.6(a).*

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

*See also note 12 on Rule 8.*

### **3. Rule 2.6(d)**

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

### **4. Rule 2.6(e)**

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

### **5. Schemes of Arrangement**

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

### **6. Rule 2.8 restrictions**

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

*If an offer period commences and discussions between the offeree and the potential offeror are continuing at the end of the restricted period, the Panel will require a “put up” or “shut up” deadline to be announced by the offeree at that time. The deadline will be 5.00 pm on the 42nd day following the end of the restricted period.*



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

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

#### NOTES ON RULE 2.7

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

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

##### 2. *Unambiguous language – paragraph (b)*

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

##### 3. *New conditions for increased or improved offers*

*See Rule 32.4.*

##### 4. *Pre-conditions*

*See Rule 13.2.*

##### 5. *Terms of an offer*

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

#### NOTES ON RULE 2.8

##### 1. *Prior consultation*

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

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

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

### 3. Media reports

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

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

### 4. Significant asset purchases

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

- (i) *the aggregate value of the consideration to be paid compared with the market capitalisation of the offeree;*
- (ii) *the value of the assets to be acquired compared with the assets of the offeree; and*
- (iii) *the operating profit (i.e. profit before tax and interest and exceptional items) attributable to the assets to be acquired compared with the operating profit of the offeree.*

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

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

- (i) *for market capitalisation of the shares of the offeree, the aggregate market value of all the equity shares of the company at the close of business on the business day immediately preceding the date of the announcement of the proposed purchase or agreement to purchase the assets, or the statement which raises or confirms the possibility that the person is interested in purchasing the assets; and*
- (ii) *for assets and profits, the figures stated in the latest published audited consolidated accounts of the offeree or, where appropriate, a subsequent preliminary statement of annual results or half- yearly or quarterly financial report.*

- (c) *If the relative values of any of the three factors set out above in paragraph (a) are more than 75%, the Panel will normally consider this to indicate that the assets are significant.*

5. *Entering into talks during a restricted period*

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

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

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

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

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

*See also Note 6 on Rule 2.6.*

**NOTES ON RULE 2.9**

1. *Rule 2.5(b)*

*In the case of an irrevocable commitment or a letter of intent procured prior to the announcement of a firm intention to make an offer, the price (and any other material terms) of the possible offer announced pursuant to Rule 2.9*

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

### *2. Acting in Concert*

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

### *NOTES ON RULE 2.10*

#### *1. Responsibility statements*

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

#### *2. Distribution of Rule 2.7 announcements*

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

#### *3. Documents to be published on a website*

*See Rule 26.*

#### *4. Making of announcements and distribution of documentation*

*See Rule 30 .*

### *NOTES ON RULE 2.11*

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

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

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

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

*NOTES ON RULE 2.12**1. Options to subscribe*

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

*2. Treasury shares*

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

*NOTE ON RULE 2.13*

*Persons required to furnish address for service.*

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

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

## NOTES ON RULE 3

## NOTES ON RULE 3.1

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

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

2. *Conflicts of interest*

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

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

## NOTES ON RULE 3.3

1. *Independence of adviser*

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

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

2. *Investment trusts*

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

3. *Significant interests*

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

## NOTES ON RULE 4

### NOTES ON RULES 4.1 and 4.2

#### 1. Panel to be consulted

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

#### 2. Consortium offers and joint offerors

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

#### 3. Sales by an offeror of securities of the offeree

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

#### 4. Discretionary fund managers and principal traders

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

*See also notes 5 and 6 on Rule 7.*

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

*See Rule 38.2.*

#### 6. Market Abuse legislation

*Notwithstanding the provisions of Rule 4, a person may be precluded from dealing or communicating price-sensitive information to others by virtue of restrictions contained in the Market Abuse Regulation (EU 596/2014) or the European Union (Market Abuse) Regulations 2016. If the Panel becomes aware of instances to which such restrictions may be relevant, it may inform the Central Bank of Ireland and/or other authorities.*

#### 7. Rule 21.1

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

### NOTE ON RULE 4.3

#### *Irrevocable commitments*

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

### NOTE ON RULE 4.4

#### *Irrevocable commitments and letters of intent*

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



## NOTES ON RULE 5

### NOTES ON RULE 5.1

#### 1. *“Voting securities” and “rights” over voting securities*

*See Notes 15 and 18 on Rule 2.1 of Part A.*

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

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

#### 2. *Aggregation of securities*

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

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

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

#### 4. *Options over existing shares*

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

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

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

#### 6. *Irrevocable Commitments*

*As rights over shares, the restrictions in Rule 5.1(a) apply to irrevocable commitments to accept an offer. An irrevocable commitment to vote at a*

*general meeting or scheme meeting in favour of a resolution to approve or implement the offer or scheme does not constitute a right over shares.*

7. *“Whitewashes”*

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

8. *Discretionary fund managers and principal traders*

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

## NOTES ON RULE 5.2

1. *Rule 9*

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

2. *After an offer lapses*

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

3. *Gifts and inheritances*

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

## NOTE ON RULE 5.5

*Single holder of securities*

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

## NOTES ON RULE 6

### 1. Application of Rule 6

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

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

### 2. Adjusted terms

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

- (a) whether the relevant purchase was made on terms then prevailing in the market;*
- (b) changes in the market price of the shares since the relevant purchase;*
- (c) the size and timing of the relevant purchase;*
- (d) the attitude of the offeree board;*
- (e) whether shares have been purchased at high prices from directors or other persons closely connected with the offeror or the offeree; and*
- (f) whether a competing offer has been announced for the offeree.*

### 3. Purchases prior to the three month period

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

### 4. Value of the Consideration

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

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

5. *Discretionary fund managers and principal traders*

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

6. *Offer period*

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

- (a) there are overlapping offer periods relative to different offers; or*
- (b) an offer has lapsed pursuant to Rule 12(b)(i).*

7. *Rule 11*

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

8. *Dividends*

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

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

## NOTES ON RULE 7

1. *Partial offers and “whitewashes”*

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

2. *Qualifications*

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

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

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

3. *Rule 7.2*

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

4. *Formal Sale Process*

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

5. *Dealings by principal traders*

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

*Any such dealings must take place within a time period agreed in advance by the Panel and be disclosed in accordance with Rule 8.*

*6. Dealings by discretionary fund managers*

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

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

**NOTES ON RULE 8****1. Consultation with the Panel**

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

**2. Relevant securities**

*See the definition of “relevant securities” in Rule 2.1 of Part A and Note 13 on that rule.*

**3. Offeree and offeror co-operation**

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

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

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

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

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

**5. Rule 8.3**

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

*By way of example, a person holding 0.5% of the ordinary shares and 0.3% of the convertible bonds of an offeree and who enters into a long contract*

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

#### **6. Discretionary fund managers**

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

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

#### **7. Recognised intermediaries**

*The exceptions for recognised intermediaries in Rule 8.3 must not be used to avoid or delay disclosures. For example, a dealing in relevant securities by such an intermediary, backed by a firm commitment by a person to purchase the relevant securities from the intermediary, will be regarded as a dealing by that person. Such a commitment may be firm even if not legally binding, for example, because of market practice. Such arrangements, therefore, should not be entered into unless appropriate disclosures are to be made. In addition, if such an arrangement is entered into with an offeror or a person acting in concert with the offeror, it may mean that the intermediary is acting in concert with the offeror, in which case normal concert party consequences*



would follow (such as the application of Rules 4, 5, 6, 7, 9, 11 and 24 and disclosure of dealings by the intermediary under Rule 8.1).

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

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

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

**9. Unquoted securities**

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

**10. Disclosure of identity**

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

**11. Separate but related dealings**

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

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

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

*disclosure which could identify them as such, although any member who is interested in 1% or more of a class of relevant securities of the offeree will be required to make an individual opening position disclosure.*

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

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

### *13. Intermediaries*

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

### *14. Opening position disclosures*

- (a) A person acting in concert with the offeror or the offeree is not required to make an opening position disclosure as details of its positions will be included in the opening position disclosure of the offeror or the offeree, as appropriate.*
- (b) When an opening position disclosure is made, the relevant details must be disclosed in relation to the relevant securities of the offeree and the offeror at the same time. No disclosure is required if there are no positions to disclose.*
- (c) Where a person is required to make an opening position disclosure and, before the deadline for doing so, there is a subsequent announcement that first identifies an offeror, the opening position disclosure does not need to disclose details in respect of the relevant securities of that subsequently announced offeror. A separate opening position disclosure must then be made in respect*

*of the relevant securities of that offeror by the deadline established by reference to the subsequent announcement.*

- (d) Except where the disclosure is an opening position disclosure by an offeror or the offeree, if, following an offer period commencing, a further offeror is publicly identified, persons who are interested in 1% or more of any class of relevant securities of the offeree or an already publicly identified offeror will not be required to make a further opening position disclosure if full details of such positions have previously been publicly disclosed under Rule 8 and such positions have not changed.*
- (e) Where a person is disclosing details in respect of more than one party to the offer at the same time, they must use a separate disclosure form in respect of each such party.*
- (f) Following an announcement by a cash offeror that its offer is being revised to become (or that its possible offer may be) a securities exchange offer, opening position disclosures and dealing disclosures will be required in the same way as if the announcement had been the first to identify the offeror as a securities exchange offeror.*

**15. Dealing disclosures**

- (a) When a dealing disclosure is made the relevant details must be disclosed in relation to the relevant securities of the offeree and the offeror at the same time. However, no disclosure is required in respect of the relevant securities of a party if there are no dealings or positions to disclose or if full details of positions in each class of that party's relevant securities have previously been publicly disclosed under Rule 8 and have not changed.*
- (b) Where a person is disclosing details in respect of more than one party to the offer at the same time, they must use a separate disclosure form in respect of each such party.*

**16. Amendments**

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

**17. Irrevocable Commitments and Letters of Intent**

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

## NOTES ON RULE 9

### NOTES ON RULE 9.1 – ACTING IN CONCERT

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

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

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

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

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

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

*See also Note 4 below.*

#### 2. *Shareholders voting together*

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

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

3. *Directors of a company*

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

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

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

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

*The Panel may treat a group of persons acting in concert as being the equivalent of a single person. Where this is the case, and given that the membership of such groups may change at any time, there will be circumstances in which the acquisition of securities by one member of a group acting in concert from another member will result in the acquirer of the securities having an obligation to make an offer. Regardless of whether securities acquired by a member of a group acting in concert come from a fellow-member or from a non-member of the group, if the acquiring member comes to hold 30% or more of the voting rights or, where he or she already holds at least 30% but not more than 49.95%, increases his or her own percentage of the voting rights by more than 0.05% in any period of 12 months, he or she will incur an offer obligation unless the Panel consents otherwise. If a waiver of the obligation is sought where securities are acquired from a fellow member of the group, factors which the Panel may take into account include:*

- (a) whether the leader of the group or the member with the largest individual holding has changed and whether the balance between the holdings in the group has changed significantly;*
- (b) the price paid for the securities acquired; and*

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

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

#### NOTES ON RULE 9.1 – OTHER GENERAL CONSIDERATIONS

##### 5. *Vendor of part only of a holding*

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

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

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

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

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

**6. Placing**

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

**7. The chain principle**

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

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

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

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

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

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

*such conversion or subscription rights or options will be considered to be an acquisition of shares for the purposes of the Rule.*

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

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

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

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

#### **9. Euroclear Bank, DTC and other settlement systems**

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

#### **10. The reduction or dilution of a holding of securities**

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

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



*Note, whereby shareholders approve the restoration of a diluted holding by purchases from those to whom new securities are issued.*

**11. Discretionary fund managers and principal traders**

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

**12. Securities borrowing/lending and sale/repurchase transactions**

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

**13. Bank Recovery and Resolution**

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

**14. Treasury shares**

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

**NOTES ON RULE 9.2**

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

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

**2. Acceptance condition**

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

**3. When derogations may be granted**

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

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

*lapses, the offeror will immediately make a new cash offer in compliance with Rule 9 at the price required by Rule 9.4 (or, if greater, at the cash price offered under the lapsed offer).*

*As an alternative to implementing the aforementioned procedure, or prior to implementing it, the Panel may direct the offeror to extend the offer (as contemplated in Rule 31.7(b)) for a further period to give time within which the aforementioned conditions may be satisfied. See also Rule 9.6.*

*If a derogation is given, the offeror must endeavour to fulfil all the other conditions with all due diligence; or*

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

#### **NOTE ON RULE 9.4**

##### *Offer period*

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

#### **NOTE ON RULE 9.7**

##### *Triggering Rule 9 during an offer period*

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

*See also Note 2 on Rule 32.1*

## NOTES ON POSSIBLE WAIVERS OF AND DEROGATIONS FROM RULE 9

### 1. *Vote of independent shareholders on the issue of new securities (“whitewash”)*

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

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

### 2. *Enforcement of security for a loan*

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

### 3. *Rescue operations*

*There are occasions when a relevant company is in such a serious financial position that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities to the rescuer or the acquisition of existing securities by the rescuer without approval by a vote of independent*

shareholders and consequently falls within the provisions of Rule 9 and would normally require a general offer. The Panel may, however, consider waiving the requirements of Rule 9 in such circumstances provided that either:

- (a) approval for the rescue operation by a vote of independent shareholders is obtained as soon as possible after the rescue operation is carried out; or
- (b) some other protection for independent shareholders is provided, or Court sanction obtained, which the Panel considers satisfactory in the circumstances.

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

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

#### 4. Inadvertent mistake

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

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

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

- (a) holders of securities conferring 50% or more of the voting rights stated in writing that they would not accept such an offer; or
- (b) securities conferring 50% or more of the voting rights were already held by one other person; or
- (c) in the case of an issue of new securities, independent shareholders holding securities conferring 50% or more of the voting rights of the company which would be capable of being cast on a "whitewash"

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resolution (see Note 1) confirm in writing that they approve the proposed waiver and would vote in favour of any resolution to that effect at a general meeting.

### 6. *Enfranchisement of non-voting shares*

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

### 7. *Transfer of existing securities*

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

### 8. *Gifts and inheritances*

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

See Note 3 on Rule 5.2.

## WHITEWASH GUIDANCE NOTE

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

### 1. INTRODUCTION

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

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

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

See also Note 1 on Rule 9.1.

### 2. SPECIFIC GRANT OF WAIVER REQUIRED

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

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

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

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

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

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

### COMMENTS ON PARAGRAPH 2:

#### A. *Early consultation*

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

#### B. *Stock Exchange*

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

### 3. *DISQUALIFYING TRANSACTIONS*

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

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

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

#### 4. CIRCULAR TO SHAREHOLDERS

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

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

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

(i) where this is dependent upon the outcome of underwriting arrangements, it must be assumed that the potential controlling shareholders will, in addition to any other entitlement, take up their full underwriting participation; and

(ii) where convertible securities, options or securities with subscription rights are to be issued, the potential controlling shareholding must be indicated on the assumption that only the controlling shareholders will exercise the conversion or subscription rights and that they will do so in full and at the earliest opportunity (the date of which must also be given);

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

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

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



- (f) *Rule 19.2 (responsibility statements, etc.);*
- (g) *Rules 23, 24.2 and 24.3 (information to shareholders which must include full details of the assets, if any, being injected);*
- (h) *Rules 24.4 and 25.4 (disclosure of interests and dealings in relevant securities). Dealings should be covered for the 12 months prior to the dispatch of the circular but dealings in respect of Rule 25.4(c)(ii) need not be disclosed as there is no offer period;*
- (i) *Rules 24.6 and 24.9 (arrangements in connection with the proposal);*
- (j) *Rule 25.5 (service contracts of directors and proposed directors);*
- (k) *Rule 25.7(b) (material contracts);*
- (l) *Rule 26 (documents to be published on a website); and*
- (m) *Rules 28 and 29 (profit forecasts and asset valuations relating to the offeree or relating to assets being acquired by the offeree).*

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

## **5. UNDERWRITING AND PLACING**

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

## **6. ANNOUNCEMENTS FOLLOWING SHAREHOLDERS' APPROVAL**

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

(b) *Where the potential controlling shareholders' maximum holding of securities is dependent on the results of underwriting, the offeree must make an announcement following the issue of the new securities stating*

*the number of securities of the offeree held by the controlling shareholders at that time and the percentage of the total voting rights in the offeree represented by those securities.*

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

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

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

*Copies of announcements made under this paragraph must be delivered to the Panel by electronic mail not later than the time of issue.*

#### **7. SUBSEQUENT ACQUISITIONS BY CONTROLLING SHAREHOLDERS**

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

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

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

**NOTES ON RULE 10****NOTE ON RULE 10.1***Waiver of 50% condition*

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

**NOTE ON RULE 10.3***Local practice*

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

*US practice*

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

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

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

### *Euroclear Bank*

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

### *NOTE ON RULE 10.4*

#### *Purchases and other acquisitions*

*The effect of Rule 10.4 is that purchases or other acquisitions of shares may be counted towards satisfying an acceptance condition of the offer only if the shares are registered in the offeree's register of members or the subject of an executed transfer meeting the requirements of Rule 10.4.*

*Shares purchased and held in a participant account in Euroclear Bank, DTC or other settlement system may not be counted towards satisfying the acceptance condition and, to be so counted, should be registered in the offeree's register of members or accepted to the offer.*

### *NOTE ON RULE 10.5*

#### *Early satisfaction of acceptance condition*

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

## NOTES ON RULE 10.6

1. *Reduced minimum acceptance level*

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

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

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

**NOTES ON RULE 11****1. Application of Rule 11**

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

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

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

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

**3. Equality of treatment**

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

**4. Discretionary fund managers and principal traders**

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

#### 5. *Derogation from highest price*

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

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

- (a) the size and timing of the relevant acquisitions;*
- (b) the attitude of the offeree board;*
- (c) whether securities have been acquired at high prices from directors or other persons closely connected with the offeror or the offeree; and*
- (d) the number of securities acquired in the preceding 12 months.*

#### 6. *Securities exchange offer*

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

#### 7. *Offer period*

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

- (a) there are overlapping offer periods relative to different offers; or*
- (b) an offer has lapsed pursuant to Rule 12(b)(i).*

#### 8. *Vendor placings*

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

#### 9. *Acquisitions for a mixture of securities and other consideration*

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

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*period or (ii) any offeree securities have been acquired for such a mixture during the offer period.*

### *10. Management Retaining an Interest*

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

### *11. Dividends*

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



**NOTES ON RULE 12***NOTES ON RULE 12(b)*

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

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

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

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

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

*See Rule 35.1.*

**NOTES ON RULE 13**

*NOTE ON RULE 13.1*

*An element of subjectivity*

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

*NOTE ON RULE 13.2*

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

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

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

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

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

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

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

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

See Note 4 on Rule 2.7.

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

### NOTES ON RULE 13.3

#### 1. Invocation of conditions

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

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

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

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

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

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

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

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*or pre-condition causing an offer to lapse or be withdrawn should be predictable and readily understood.*

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

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

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

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

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

## 2. Implementation Agreements

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

See also Note 2 to Rule 24.3.

### NOTE ON RULE 13.4

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

- (a) the passing of any resolution necessary to create or allot the new securities and/or to allot the new securities on a non-pre-emptive basis (if relevant); and*
- (b) where the new securities are to be admitted to listing or to trading on any investment exchange or market, any necessary listing or admission to trading condition (see also Rule 24.10).*

**NOTES ON RULE 14**1. *Comparability*

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

2. *Equity share capital*

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

**NOTES ON RULE 15**

1. *Rule 16.2(d)*

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

2. *Availability of offers and proposals on a website*

*An offeror will be obliged under Rule 26.1(ii) to publish an offer or proposal made by it in accordance with Rule 15 on a website from the time such offer or proposal is published until the end of the course of the offer.*

**NOTES ON RULE 16***NOTES ON RULE 16.1**1. Top-ups and other arrangements*

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

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

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

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

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

*3. Finders' fees*

*Rule 16 also applies to cases in which a person interested in shares of an offeree is to be remunerated for the part that he or she has played in promoting the offer. The Panel may consent to such remuneration, provided that the interest in shares is not substantial and it can be demonstrated*



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*that a person who had performed the same services in comparable circumstances, but had not at the same time been interested in shares in the offeree, would have been entitled to receive no less remuneration.*

### 4. *Debt syndication during an offer period.*

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

- (a) each of those syndicatees in the syndicate concerned having established effective information barriers, which comply with the minimum standards set down by the Panel, between the department of the syndicatee that is involved in making the decision in relation to the debt syndication and its department or departments that are responsible for trading, or making investment decisions in relation to, equity investments; and*
- (b) each of those syndicatees having provided a confirmation and undertaking to the mandated lead arranger for the transaction and to the Panel that such syndicatee has established effective information barriers that comply with the minimum standards set down by the Panel and that it will maintain those barriers so as to ensure that confidential information received by it in the course of the transaction is not accessed by or shared with persons or entities within any of its equity departments.*

*See also Note 5 on Rules 20.1 and 20.2*

### NOTES ON RULE 16.2

#### 1. *Independent shareholder approval*

*In considering whether to exercise its discretion under Rule 16.2(b) or (c) to require the arrangements to be approved at a general meeting of the offeree shareholders, the Panel will have particular regard to whether the value of the arrangements is significant and whether the nature of the arrangements is unusual. The Panel will not normally require that management incentivisation arrangements or proposals the rights under which will or would be no more substantial than any rights which the offeror has prior to the offer, in accordance with the terms of similar arrangements, awarded to members of its own management of similar grade, be approved at a general meeting of the offeree shareholders but will take into account whether such arrangements or proposals are of material significance to the members of management.*

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

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

## NOTES ON RULE 17

### NOTES ON RULE 17.1

1. *Acceptances of cash underwritten alternative offers*

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

2. *Securities not quoted on any recognised market*

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

3. *Acceptances not complete in all respects*

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

4. *Statements of support*

*See note 2 on Rule 19.3.*

**NOTES ON RULE 19****NOTES ON RULE 19.1****1. Advisers' responsibility for release of information**

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

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

**2. Unambiguous language**

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

**3. Third party forecasts and estimates**

*See Rule 28.1(h)*

**4. "...in connection with..."**

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

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

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

### NOTES ON RULE 19.2

#### 1. Delegation of responsibility

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

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

#### 2. Quoting information about another company

*If a company issues a document or advertisement containing information about another company which makes it clear that such information has been compiled from published sources, the directors of the company issuing the document or advertisement need only take responsibility, as regards the information so compiled, for the correctness and fairness of its reproduction or presentation. The responsibility statement may be amended accordingly but where it relates to listing particulars the provisions of the listing rules of relevant recognised markets may affect the position. Where statements of opinion or conclusions concerning another company or unpublished information originating from another company are included, these must normally be covered by a responsibility statement by the directors of the company issuing the document or advertisement or by the directors of the other company; the qualified form of responsibility*

*statement provided for in this Note is not acceptable in such instances. In all cases of quoted material, the directors carry responsibility for ensuring that it is not presented out of context.*

3. *Responsibility for part of a prospectus*

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

4. *Exclusion of directors*

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

5. *When an offeror is controlled*

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

6. *Split responsibility in recommended documents.*

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

NOTES ON RULE 19.3

1. *Consulting the Panel*

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

2. *Statements of support*

*The offeree or offeror must not make statements about the level of support from the offeree's or offeror's shareholders unless such shareholders' up-to-date intentions have been clearly stated to the offeree or its advisers or (as the case may be) the offeror or its advisers. The Panel will require any such statement to be verified to its satisfaction; this will include immediate*

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*confirmation in writing to the relevant party to the offer or its adviser and that confirmation being provided to the Panel. Such confirmation will then be treated as a letter of intent. The Panel will not require separate verification by an offeror where the information required by Rule 2.9 is included in an announcement of an offer or possible offer which is published no later than 12 noon on the business day following the date on which the letter of intent is procured.*

See also Rule 17.1(e).

### NOTES ON RULE 19.4

#### 1. “...in connection with...”

See note 4 on Rule 19.1.

#### 2. Approval

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

#### 3. Verification

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

#### 4. Forms

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

### NOTES ON RULE 19.5

#### 1. Consent to use of other callers

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

- (a) *an appropriate script for callers being approved by the Panel;*
- (b) *the financial adviser carefully briefing the callers prior to the start of the operation and, in particular, stressing:*
  - (i) *that callers must not depart from the script;*

- (ii) *that callers must decline to answer questions the answers to which fall outside the information given in the script; and*
  - (iii) *the callers' responsibilities under General Principle 1; and*
- (c) *the operation being supervised by the financial adviser.*

## 2. *Gathering of irrevocable commitments*

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

## 3. *Statutory and regulatory provisions*

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

## 4. *Encouraging shareholder participation*

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

### NOTE ON RULE 19.6

#### *Joint interviews and debates*

*Joint interviews and debates between representatives of an offeror and the offeree, or between representatives of competing offerors, are of their nature confrontational and thus increase the risk that the standards of accuracy, completeness and fair presentation required by the Rules may not be safeguarded and that misleading or inaccurate statements may be made. The often heated and complicated nature of such interviews and debates contributes to this problem. Where representatives of the offeror and the offeree or of competing offerors are to participate in a joint*



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*interview or debate, the financial adviser to each party has a particular responsibility to ensure that no new information is disclosed, and that no misleading or inaccurate statement is made, by that adviser's client; and to ensure that, if any such misleading or inaccurate statement is made, it is corrected during the course of the interview or debate, as it is likely to be very difficult to correct the error subsequently, particularly where that interview or debate has received widespread media coverage.*

**NOTES ON RULE 20***NOTES ON RULES 20.1 and 20.2**1. Furnishing of information to offerors*

*Rules 20.1 and 20.2 do not prevent the furnishing of information in confidence by an offeree to an offeror or vice versa.*

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

*Attention is drawn to paragraph (b)(v) of the acting in concert presumptions in Rule 3.3 of Part A, as a result of which, for example, Rule 20.2 will be relevant to stockbrokers who, although not directly involved with the offer, are presumed to be acting in concert with the offeror or the offeree because the stockbrokers are in the same group as the financial adviser to an offeror or the offeree.*

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

*In view of their obligation to satisfy the Panel concerning the conduct of such meetings, financial advisers or corporate brokers may find it useful to record the proceedings of such meetings.*

*4. Third party forecasts and estimates*

*See Rule 28.1(h).*

*5. Debt syndication during an offer period*

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

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

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

Where a syndicatee has no interest in the relevant securities of the offeree, in order to avoid any possible breach of Rules 20.1 and 20.2 the Panel may require the syndicatee to provide the above confirmation and undertaking or to undertake to the Panel that it will not acquire an interest in relevant securities of the offeree during the offer period without the consent of the Panel.

See also Note 4 on Rule 16.1.

6. Rule 26

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

7. Employee Communications

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

8. Meetings following the announcement of a recommended firm offer

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

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

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

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

*NOTE ON RULE 20.3*

*General enquiries*

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

*NOTE ON RULE 20.5*

*Webcasts and audio-only communications*

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

## NOTES ON RULE 21

### NOTES ON RULE 21.1

#### 1. Frustrating action

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

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

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

#### 2. "Material amount"

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

- (i) the aggregate value of the consideration to be received or paid compared with the market capitalisation of the offeree;*
- (ii) the value of the assets to be disposed of or acquired compared with the assets of the offeree; and*
- (iii) the operating profit (i.e. profit before tax and interest and excluding exceptional items) attributable to the assets to be disposed of or acquired compared with the operating profit of the offeree.*

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

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

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

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

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

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

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

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

### 3. *Interim dividends*

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

### 4. *Service contracts*

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

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

### 5. *Established equity-based incentive arrangements*

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

### 6. *Pension schemes*

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

### 7. *Shareholders' Meeting*

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

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

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

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

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

### 10. *Conditional contracts*

*The Panel should be consulted before the offeree enters into any contract to take any action that might constitute frustrating action even if the contract provides that the taking of that action is to be subject to the*

*approval of the offeree's shareholders. The Panel will be concerned to assess whether the contract contains other provisions (for example, cost cover arrangements) that may constitute frustrating action.*

#### *11. Asset Purchases and Sales*

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

*Panel consent will be required in advance under Rule 21.1(a)(5) where the offeree proposes to enter into a contract with the purchaser/vendor and that contract contains an inducement fee or fees that become or may become payable by the offeree in the event that approval of the offeree's shareholders is sought and not obtained. The Panel may consent to the entering into of such an arrangement provided that: (a) the aggregate value of the inducement fee or fees that may be paid by the offeree in relation to the same asset(s) is no more than 1% of the value of the transaction (or, if there are two or more transactions in respect of the same asset(s), the transaction with the highest value) and (b) the aggregate value of the inducement fee or fees that may be paid by the offeree in respect of all transactions to which Rule 21.1 applies (not including inducement fees to which Rule 21.2 applies) is no more than 1% of the value of the offeree calculated by reference to the value of the offeror's offer at the time of the announcement made under Rule 2.7.*

#### *12. Established share buyback programmes*

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

#### *NOTE ON RULE 21.2*

##### *Inducement Fees*

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

- (a) the inducement fee relates only to specific quantifiable third party costs;*



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

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

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

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

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

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

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

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

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

**NOTE ON RULE 22**

*Qualifying periods*

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

**NOTE ON RULE 23**

*Material Changes*

*See also Rule 27.*

## NOTES ON RULE 24

### NOTE ON RULE 24.1

*Regulatory Information Service announcements and website publications*

*See also Rule 26 and Rule 30.5(d).*

### NOTES ON RULE 24.3

#### 1. *Further information requirements*

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

#### 2. *Implementation Agreements*

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

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

### NOTES ON RULE 24.4

#### 1. *Aggregation*

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

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

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

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

*Acquisitions and disposals should not be netted off, the highest and lowest prices should be stated and the disclosure should distinguish between the different categories of interests in relevant securities and short positions. A full list of all dealings, together with a draft of the proposed aggregated disclosure, should be sent to the Panel, for its approval, in advance of the sending of the offer documentation and the full list of dealings should be published on a website (see Rule 26.3(viii)).*

## 2. Discretionary fund managers and principal traders

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

## 3. Offer period

*See the definition of “offer period”, in relation to the commencement date of an offer period for the purposes of Rule 24.4(c), where:*

- (a) *there are overlapping offer periods relative to different offers; or*
- (b) *an offer has lapsed pursuant to Rule 12(b)(i).*

### NOTE ON RULE 24.5

*Commissions etc.*

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

### NOTE ON RULE 24.6

*Management incentivisation arrangements*

*See Rule 16.2.*

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### NOTE ON RULE 24.7

#### *Incorporation by reference*

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

### NOTE ON RULE 24.11

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

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

### NOTE ON RULE 24.12

#### *Panel consent*

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

## NOTES ON RULE 24.15

1. *Accessibility to information*

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

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

2. *Restricting access to websites*

*See Rule 30.4(a).*

**NOTES ON RULE 25**

*NOTE ON RULE 25.1*

*Regulatory Information Service announcements and website publications*

*See also Rule 26 and Rule 30.5(d).*

*NOTES ON RULE 25.2*

1. *When a board has effective control*

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

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

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

3. *Management buy-outs*

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

*NOTES ON RULE 25.4*

1. *Aggregation*

*Note 1 on Rule 24.4 is also applicable to Rule 25.4*

2. *Offer period*

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

- (a) there are overlapping offer periods relative to different offers; or*
- (b) an offer has lapsed pursuant to Rule 12(b)(i).*



## NOTE ON 25.5

*Particulars of directors' service contracts*

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

**NOTES ON RULE 26**

1. *Restricting access to websites*

*See Rule 30.4(a).*

2. *Financing documents*

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

**NOTE ON RULE 27**

1. *Sufficient information*

*See also Rule 23.1(a).*

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

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

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

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

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

**NOTES ON RULE 28***NOTES ON RULE 28.1*1. *Existing forecasts*

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

2. *Targets etc.*

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

3. *Ordinary course profit forecasts*

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

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

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

4. *Profit forecast for part of a business*

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

### 5. *Fairness opinions*

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

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

#### NOTES ON RULE 28.2

##### 1. *Other financial periods*

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

##### 2. *Rule 28.2(d)*

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

##### 3. *Ordinary Course*

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

##### 4. *Rule 28.1*

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

## NOTE ON RULE 28.5

*Interim and Preliminary figures*

*If a company which is not quoted on a Stock Exchange wishes to take advantage of the exemptions under Rule 28.5, it should consult the Panel in advance.*

## NOTE ON RULE 28.6

*Cost saving measures announced before the offer period*

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

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

## NOTE ON RULE 28.7

*Exceptional Circumstances*

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

## NOTES ON RULE 29

### NOTES ON RULE 29.1

#### 1. Ownership of the assets

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

#### 2. Repetition of a valuation

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

#### 3. Net Asset Values

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

#### 4. Profit Forecasts

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

#### 5. Waiver in certain circumstances

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

## NOTES ON RULE 29.2

1. *Independence*

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

2. *Qualifications*

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

## NOTES ON RULE 29.3

1. *Valuation by sample*

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

2. *Qualifications and Assumptions*

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

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



## **N8.6**

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

**NOTE ON RULE 30**

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

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

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

## NOTES ON RULE 31

### NOTE ON RULE 31.3

#### *Suspension of offer time-table*

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

### NOTE ON RULE 31.4(b)

#### *Competition involving takeover schemes*

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

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

### NOTES ON RULE 31.5

*(See also Rule 31.6)*

#### 1. *Firm statements*

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

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

## 2. Reservations

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

### NOTES ON RULE 31.6(a)

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

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

- (a) if there is a matter outstanding under the rules on the final closing date; or*
- (b) if the offeree board consents to an extension; or*
- (c) as provided for in the Note on Rule 31.9; or*
- (d) if the offeror's receiving agent requests an extension for the purposes of complying with Rule 10.6.*

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

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

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

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

#### 3. European Commission

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

### 4. Extension of Day 60 after Day 46

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

#### NOTE ON RULE 31.6(b)

#### 5.00 p.m. announcement

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

#### NOTE ON RULE 31.7

#### The effect of lapsing

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

#### NOTE ON RULE 31.9

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

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

**NOTES ON RULE 32***NOTES ON RULE 32.1**1. When revision is required*

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

*2. Triggering Rule 9*

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

*This note does not apply to takeover schemes.*

*See also Rule 9.7.*

*3. No Increase Statements*

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

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

*The Panel should be consulted in good time where it is proposed to release any announcement which may fall within the scope of Rule 32.1(b).*

### 4. Extension of Day 60 after Day 46

See Note 4 to Rule 31.6(a).

### NOTES ON RULE 32.2

#### 1. Firm statements

*In general, an offeror will be bound by any firm statement made by it or on its behalf as to the finality of the value of its offer or the type of consideration. In this respect, the Panel will treat any indication of finality as absolute, unless the offeror clearly states the circumstances in which the statement will not apply. The Panel will not distinguish between the precise words chosen, i.e. the offer is “final” or will not be “increased”, “amended”, “revised”, “improved”, “changed”, and similar expressions will all be treated in the same way. Any statement of intention will be regarded for this purpose as a firm statement; expressions such as “present intention” should not be used as they may be misleading to shareholders.*

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

#### 3. Switching to or from a scheme

See note 3 on Rule 41.3.

#### 4. Dividends

*Where an offeror has made a no increase statement and a dividend (or other distribution) is subsequently paid or becomes payable by the offeree to offeree shareholders, the offeror will normally be required to reduce the offer consideration by an amount equal to the dividend (or other distribution) so that the overall value receivable by offeree shareholders remains the same, unless, and to the extent that the offeror has stated that offeree shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.*

#### 5. Reservations

*The Panel’s consent is required to the inclusion of a reservation to a no increase statement. The Panel will, in particular, assess whether a proposed reservation meets the requirements of Rule 32.2(e).*

**NOTE ON RULE 33**

*Reintroduction of alternative offer*

*Reintroduction would constitute a revision of the offer and would, therefore, be subject to the requirements of, and only be permitted as provided in, Rule 32.*



**N9.8**

**NOTE ON RULE 34**

*Further right of withdrawal*

*See Rule 17.2.*

## NOTES ON RULE 35

## NOTES ON RULE 35.1

1. *When derogations may be granted*(a) *The Panel may consider granting consent under Rule 35.1 if:*

(i) *the new offer is recommended by the offeree board. Such consent will not normally be granted within three months after the lapsing of an earlier offer in circumstances in which the offeror was prevented from revising or extending its previous offer as a result of a no increase statement or no extension statement; or*

(ii) *the new offer follows the announcement by a third party of a firm intention to make an offer in respect of the offeree;*

(iii) *the new offer follows the announcement by the offeree of a “whitewash” proposal (see the Whitewash Guidance Note in the Notes on Rule 9) or of a reverse takeover transaction which has not failed or lapsed or been withdrawn; or*

(iv) *the Panel determines that there has been a material change of circumstances.*

(b) *The Panel may also consider granting consent under Rule 35.1 in circumstances in which it is likely to prove, or has proved, impossible to obtain material governmental or regulatory clearances relating to an offer within the timetable laid down by the Rules. The Panel should be consulted by an offeror as soon as it has reason to believe that this may become the position.*

(c) *Every switch under Rule 41.3 is also likely to require the Panel’s consent under Rule 35.1. In deciding whether to grant consent to a switch under Rule 41.3, the Panel will also take into account any factors that may be relevant in the context of Rule 35.1. See Note 2 on Rule 41.3.*

2. *Entering into talks during a restricted period*

*The Panel will normally apply the same approach to Rule 35.1(f) as that set out in note 5 on Rule 2.8.*

3. *Significant asset purchases*

*The Panel will normally apply the same approach to Rule 35.1(g) as that set out in note 4 on Rule 2.8.*

## NOTES ON RULE 36

### NOTES ON RULE 36.1

1. *Use of tender offers*

*Where a proposed offer would constitute a substantial acquisition of securities, the Panel may consent to the making of a tender offer as an alternative to a partial offer. A tender offer of a proposed size which would not constitute a takeover or other relevant transaction would not require Panel consent. See Rule 7 of the Substantial Acquisition Rules.*

2. *Buying before the partial offer*

*In the case of an offer which, if successful, would result in the offeror and persons acting in concert with it holding securities conferring 30% or more but less than 100% of the voting rights in a relevant company, the consent of the Panel may not be granted if, for example, the offeror or persons acting in concert with it have acquired, selectively or in significant numbers, voting securities of the offeree during the 12 months preceding the application for consent or if such securities have been purchased at any time which the Panel considers to be after the partial offer was reasonably in contemplation.*

3. *Partial offer resulting in a holding of less than 30%*

*Panel consent is likely to be granted in the case of an offer which could not result in the offeror and any persons acting in concert with it holding securities conferring in the aggregate 30% or more of the voting rights in the offeree.*

### NOTES ON RULE 36.2

1. *Discretionary fund managers and principal traders*

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

2. *Partial offer resulting in less than 30%*

*The Panel may consider granting consent under Rule 36.2(b) following a partial offer which could only have resulted in a holding conferring less than 30% of the voting rights in a relevant company. The Panel may consider granting consent under Rule 36.2(b) for purchases of securities within 12 months after the end of the offer period if a partial offer which could have resulted in a holding conferring more than 30% of the voting rights in the relevant company has resulted in a holding conferring less than 30% of the voting rights in that company. The provisions of Rule 9 and the Substantial Acquisition Rules may be relevant in such cases.*

NOTES ON RULE 36.4

1. *Mode of shareholder approval*

*Such approval is normally signified by the ticking of a separate box on the form of acceptance or the equivalent for an electronic message.*

2. *Waiver of requirement*

*The Panel will consider waiving the requirement for majority approval if over 50% of the voting rights of the offeree are held by a single shareholder (including persons regarded as such for the purposes of Rule 5.1(a)(ii)).*

3. *Rule 36.2(c)*

*Note 1 on Rule 35.1 may be relevant.*

## NOTES ON RULE 37

1. *Prior consultation*

*A number of problems may arise in connection with a redemption or purchase by a relevant company of its own voting securities. The significance of these problems may depend, for instance, upon the precise number of voting securities held by the directors and persons acting in concert with them (including persons presumed to be so acting under Rule 3.3(b) of Part A or Rule 7.2) and the amount of the proposed redemption or purchase. Under Rule 3.3(b)(vi) of Part A, the directors of a relevant company and certain connected persons are presumed to be acting in concert, until the contrary is established to the satisfaction of the Panel, whilst a relevant company is in the course of redeeming or purchasing its own voting securities, or whilst its directors propose that the company redeem or purchase its own voting securities. The Panel should be consulted in any case where a relevant company proposes to make purchases which may result in a requirement for a general offer under Rule 37(a) or where there is doubt as to the status of persons under this Rule.*

2. *Vote of independent shareholders*

*When a redemption or purchase by a company of its own securities would otherwise result in an obligation to make a general offer under Rule 37, the Panel may in certain circumstances waive the obligation if there is an independent vote at a shareholders' meeting. In this context, the Whitewash Guidance Note relating to waiver of the obligation to make an offer under Rule 9 in certain circumstances may be similarly applicable.*

3. *Renewals*

*Any waiver previously obtained under this Rule must (whether or not voting securities have in fact been redeemed or purchased by the relevant company concerned) be renewed at the same time as shareholders' authority is renewed under, as applicable, sections 105 and 1072 to 1075 of the Companies Act, 2014.*

4. *Disqualifying transactions*

*Notwithstanding that the redemption or purchase by a relevant company of its own voting securities is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company:*

*(a) the Panel may be unwilling to waive an obligation to make an offer under Rule 37(a) if the relevant person or persons acting in concert with them have acquired voting securities in the company in the knowledge that the company intended to seek permission from its shareholders to redeem or purchase its own securities; and*

*(b) a waiver may be invalidated if any purchases of voting securities in the company are made by the relevant person or persons acting in concert with them in the period between the sending of the circular to shareholders and the shareholders' meeting.*

5. *Rule 9*

*Subsequent to the redemption or purchase by a relevant company of voting securities, all shareholders will be subject, in making acquisitions of securities in the company, to the provisions of Rule 9.1.*

6. *Offer period*

*See definition of "offer period", in relation to the commencement date of an offer period for the purposes of Rule 37(b), where an offer has lapsed pursuant to Rule 12(b)(i).*

**NOTES ON RULE 38**

*NOTE ON RULE 38.1*

*Implications of breach*

*Any dealings by an exempt principal trader connected with an offeror or the offeree with the purpose of assisting an offeror or the offeree, as the case may be, will constitute a serious breach of the Rules. Accordingly, if the Panel determines that a principal trader has carried out such dealings, it will be prepared to rule that the principal trader shall cease to enjoy exempt status for such period of time as the Panel may consider appropriate in the circumstances.*

*NOTE ON RULE 38.2*

*Responsibility for compliance*

*It will generally be for the offeror and its advisers rather than the principal trader to ensure compliance with Rule 38.2.*

*See also Rule 4.2(b).*

*NOTES ON RULE 38.5*

*1. Rule 8*

*See Note 4 on Rule 8.*

*2. Recognised intermediaries dealing in a proprietary capacity*

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

**NOTE ON RULE 39***Conditions imposed by the Panel*

*Where the Panel consents to a dual-company transaction, any conditions which it imposes are likely to be influenced by the structure of the proposed transaction, but would normally be framed to give shareholders of any relevant company concerned a comparable level of protection to that which the Takeover Rules would afford in the case of a conventional offer.*



**NOTE ON RULE 40**

*Conditions and other requirements*

*The conditions imposed by the Panel under Rule 40.1(a) will normally reflect the content of the Whitewash Guidance Note on Rule 9. The requirements of the Panel under Rule 40.1(b) will normally relate to the satisfaction of the intent of relevant Rules, having regard to the fact that the proposed transaction would result in the existing shareholders in the acquirer becoming a minority. See the definition of “reverse takeover transaction” in Rule 2.1(a) of Part A and the provisions relating to independent advice in Rule 3.2.*

**NOTES ON RULE 41***NOTE ON RULE 41.1*1. *Panel review of documents*

*The Panel Executive may review and comment on documents provided to the Panel under Rule 41.1 but such review and comment shall not be considered to constitute approval of any such document for any purpose of the Rules and the fact that the Panel Executive has or has not reviewed or commented on any such document shall not limit the statutory rights of the Panel.*

*NOTES ON RULE 41.3*1. *Determination of the scheme or offer timetable following a switch*

*Factors which the Panel may take into account when determining the scheme or offer timetable that will apply following a switch include:*

- (a) the time required to enable shareholders in the offeree or acquiree to reach a properly informed decision;*
- (b) the time which has elapsed since the switching offeror's or acquirer's original announcement under Rule 2.7 and the extent to which it is reasonable for the offeree or acquiree board to be hindered in the conduct of its affairs;*
- (c) the views of the offeree or acquiree board and the switching offeror or acquirer; and*
- (d) the likely effect of the new offer timetable on any competing offeror or acquirer.*

2. *Rule 35.1*

*When an offeror or acquirer seeks the consent of the Panel to a switch, it should at the same time request any appropriate consent under Rule 35.1.*

3. *Switches not precluded by no increase statement*

*A switch to or from a takeover scheme will not normally, of itself, be regarded as an amendment that would be precluded by an earlier no increase statement in relation to the value or type of consideration offered. Accordingly, it will not be necessary for an offeror or acquirer making such a statement to reserve specifically the right to switch from one structure to the other.*

## **N10.10**

### *4. Panel consent to switches*

*In considering whether to consent to a proposed switch, the Panel will have regard primarily to the effect that the switch is likely to have on the interests of offeree or acquiree shareholders. The views of the offeree or acquiree board and its Rule 3 adviser as to the effect of the proposed switch on the interests of those shareholders will be a relevant factor in the Panel's determination as to whether to grant its consent.*

**NOTE ON APPENDIX 1***GENERAL NOTE*

*It is essential when determining the result of an offer under these Rules that such appropriate measures are adopted that all parties to the offer may be confident that the result of the offer is arrived at by an objective procedure which, as far as possible, eliminates areas of doubt. The procedures set out in Appendix 1 are designed to ensure that those acceptances and purchases which may be counted towards fulfilling the acceptance condition and thus included in the certificate required by Rule 10.6 are properly identified to enable the receiving agent to provide the certificate. Receiving agents are also required to establish such appropriate procedures that acceptances and purchases can be checked against each other and between different categories without any shareholding being counted twice.*

*The principles and procedures outlined in Appendix 1 must, except with the consent of the Panel, be followed in all cases. The Panel expects co-operation between the offeree's registrar and the offeror's receiving agent to ensure that the procedures can be undertaken in a timely manner. Whenever possible, if requested to do so, the registrar must provide, in appropriate form, details of changes to the register rather than a complete new register.*

*Receiving agents will have direct access to the Panel if they believe that there is insufficient co-operation or that they are being given instructions contrary to the terms of Appendix 1.*

*Appendix 1 should be read in conjunction with Rules 9.2 and 10 and, in particular, Rules 10.3 to 10.6.*

**NOTES ON APPENDIX 2**

*NOTE ON PARAGRAPH 2*

*Method of calculating net asset value*

*The Panel does not consider it appropriate to insist on a standard method of calculating net asset values in formula offers. There is, however, a danger of confusion arising in the minds of shareholders if they are asked to consider the advantages or disadvantages of an offer by reference to net asset values which are calculated by each side on a different basis. Principals and their advisers must, therefore, ensure that wherever reference is to be made to net asset value as an argument for or against an offer, the utmost clarity is used to make plain the basis of calculation. This applies to advertisements as well as to documents addressed to shareholders directly.*

*NOTE ON PARAGRAPH 9*

*Co-operation in determining price, after unconditionality*

*If agreement between the offeror and the offeree is not forthcoming the offeror should not determine unilaterally the price payable. Where such circumstances could arise, the offer should provide for an interim payment to be made to accepting shareholders of not less than 85% of the offeror's best estimate of the formula price payable. When the offeror is able to calculate correctly the price payable, the difference should be paid to accepting shareholders as soon as possible; any excess paid to shareholders as a result of an over-estimate of the formula asset value should not be recoverable.*

**NOTE ON APPENDIX 4**

*Section 4*

*NOTE ON RULE (1)*

*Triggering Rule 9*

*During the course of a takeover scheme, the acquirer or a person acting in concert with it may acquire an interest in shares that requires it to extend a mandatory offer under Rule 9 only if the acquirer has obtained the Panel's prior consent to switch from a scheme to an offer. (See Rule 41.3.)*