

APPENDIX 2

FORMULA OFFERS GUIDANCE NOTE

1 INTRODUCTION

When offers are made for the share capital of investment trusts, it is common for the consideration to be calculated by reference to a formula related to the net assets of the offeree company. If offers are made on this basis, there are certain special requirements which must be followed.

2 SPECIFICATION OF THE FORMULA

(a) Since it is common for the result of the formula to differ from net asset value as generally understood, the term “net asset value” should not be used in connection with the consideration to be paid to shareholders. The expression “formula asset value” should be used instead. Where the consideration is expressed by reference to formula asset value, the means by which this figure will be arrived at must be clearly set out in both the offer announcement and the offer document. It will usually be convenient to express this formula algebraically, identifying the significant constituent elements, in a separate appendix.

(b) 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 being caused when assessing 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 should, 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 paid advertisements in the press as well as to documents and announcements published in connection with an offer.

3 DATE ON WHICH THE FORMULA CRYSTALLIZES

In all circumstances, the consideration payable under the formula should be determined as at the day the offer becomes or is declared unconditional or, in the case of a scheme of arrangement, as at a date which is a fixed number of days prior to the court sanction hearing (in either case, the “FAV calculation date”).

NOTE ON SECTION 3

Schemes of arrangement

In the case of a scheme, the FAV calculation date should normally be set for a date no earlier than seven days prior to the date of the court sanction

hearing (as defined in Appendix 7). The Panel should be consulted if this is impracticable.

4 ESTIMATE OF THE FORMULA OFFER VALUE

The offer announcement must include an estimate of the value of the offer, in pence per share, on the day of the announcement and the offer document must include a similar estimate on the latest practicable date prior to publication.

5 MAXIMUM AND MINIMUM PRICES

An offeror may include in a formula offer a term that if the formula offer produces a price higher than a specified price (the “maximum price”) only that price will be paid and/or a term that if it produces a price lower than a specified price (the “minimum price”) then that price will be paid.

6 RULE 6

(a) Since in a formula offer the current value of the offer is only determinable by reference to the value, at any relevant time, of the assets to which the formula is related, an offeror can only be confident that acquisitions of interests in shares during an offer are in conformity with Rule 6 if it is able to calculate the price which would have been payable on the basis of the formula at the time of the acquisitions. Where such calculation is possible and the price paid exceeds the formula price so calculated, it follows that the acquisitions will have been made on the basis of an improved formula and the offeror will, therefore, be required to increase the offer by making the improved formula generally available.

(b) Calculation of the formula price at the time of an acquisition will only be possible if there is co-operation from the board of the offeree company. It is not acceptable for the procedure set out in the previous paragraph to be applied on the basis of estimated net asset values, eg those contained in investment analysts’ circulars. Where there is no co-operation from the board of the offeree company, therefore, the offeror will not be able to use this procedure and any acquisitions which fall to be taken into account for the purposes of Rule 6 will create an obligation to pay at least the same price to all accepting shareholders. Where there are alternative offers, however, the offeror may choose which of the alternatives should be subject to the minimum price.

7 RULES 9 AND 11

Rule 9 and Rule 11 apply equally to formula offers; thus, if appropriate, the cash offer must contain a term guaranteeing a minimum price under the offer at the highest cash price paid in respect of the acquisitions of interests in shares to which the Rules apply.

8 “FLOOR AND CEILING” CONDITIONS

There is no objection to the incorporation of conditions in a formula offer which provide for the offer to lapse in the event that the formula asset value (calculated on the FAV calculation date) falls outside specified limits or if movements in certain securities markets’ indices exceed specified limits.

9 OFFEREE BOARD OBLIGATIONS

(a) There is no obligation on the board of the offeree company to provide information relating to the calculation of the formula price until a successful offeror has taken control. Nevertheless, where an offer has a “floor and ceiling” condition related to the formula asset value, the board of the offeree company must announce, within 7 days after the FAV calculation date, whether the formula calculated on the FAV calculation date fell within the specified limits.

(b) Once an offer is unconditional, it is expected that both sides will co-operate in calculating the formula price payable to accepting shareholders. Where agreement is not forthcoming, however, the offeror will not be permitted to 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 will not be recoverable.