

APPENDIX 7

SCHEMES OF ARRANGEMENT

DEFINITIONS AND INTERPRETATION

Court sanction hearing

The hearing of the court to sanction a scheme of arrangement.

Effective date

The date on which the order of the court sanctioning the scheme is delivered to the registrar of companies for registration.

Long-stop date

The date stated in the scheme circular to be the latest date by which the scheme must become effective and included as such in the terms of the scheme.

Offer documents and offeree board circulars

In the case of a scheme of arrangement, references in the Code to an offer document or to the offeree board circular (and related expressions) shall be construed as references to the scheme circular and references to a revised offer document or to a subsequent offeree board circular (and related expressions) shall be construed as references to any supplementary scheme circular.

Shareholder meetings

The meeting of shareholders in the offeree company (or meetings of relevant classes of shareholders) convened by the court to consider a resolution to approve a scheme of arrangement and any general meeting of the offeree company (and related class meetings) convened to consider any resolution to approve or give effect to a scheme.

1 APPLICATION OF THE CODE TO SCHEMES OF ARRANGEMENT

The provisions of the Code apply to an offer effected by means of a scheme of arrangement in the same way as they apply to an offer effected by means of a contractual offer, except as set out in this Appendix 7.

NOTE ON SECTION 1

Schemes of arrangement in jurisdictions other than the United Kingdom

Where an offer to which the Code applies is effected by means of a scheme of arrangement in a jurisdiction other than the United Kingdom, the Panel

must be consulted to determine how the provisions of Appendix 7 must be applied if there are differences in how the scheme is to be implemented as compared with how a scheme of arrangement is customarily implemented in the United Kingdom.

2 MANDATORY OFFERS

An obligation to make a mandatory offer under Rule 9 may not be satisfied by way of a scheme of arrangement except with the prior consent of the Panel.

NOTES ON SECTION 2

1. When the Panel's consent may be granted

Factors which the Panel will take into account when considering an application to satisfy a mandatory offer obligation by way of a scheme include the views of the offeree board and its independent adviser and the likely timetable of the scheme.

If the Panel permits the mandatory offer obligation to be so satisfied and the scheme lapses for a reason which would not have caused a contractual offer to lapse, the Panel will require the offeror to make a new contractual offer immediately in compliance with Rule 9. The scheme circular must include a statement by the offeror that, if the scheme lapses for such a reason, the offeror will make a new contractual offer as required by the Panel. In such circumstances Rule 9.7 will apply.

2. Triggering Rule 9 during a scheme

Where an offeror is implementing its offer by way of a scheme of arrangement, the offeror and persons acting in concert with it may acquire an interest in shares which causes the offeror to have to extend a mandatory offer under Rule 9 only if the offeror has obtained the Panel's prior consent either to satisfy its mandatory offer obligation by way of a scheme or to switch to a contractual offer (see Section 8 of this Appendix 7).

3 EXPECTED SCHEME TIMETABLE

(a) Where an offeror announces a firm intention to make an offer which is to be implemented by means of a scheme of arrangement and the board of the offeree company agrees to the inclusion of a statement of its intention to recommend the scheme in that announcement, then the offeree company must, except with the consent of the Panel, ensure that the scheme circular is sent to shareholders and persons with information rights within 28 days of that announcement. If the offeree company board subsequently withdraws its recommendation, this obligation will cease.

(b) The parties to the offer are permitted to include within the conditions to the scheme:

(i) a long-stop date by which the scheme must become effective (unless extended by the offeror with the agreement of the offeree company or, in a competitive situation, with the consent of the Panel);

(ii) a specific date by which the shareholder meetings must be held (unless extended by the offeror with the agreement of the offeree company or, in a competitive situation, with the consent of the Panel), provided that the date specified must be more than 21 days after the expected date of the shareholder meetings to be set out in the scheme circular; and

(iii) a specific date by which the court sanction hearing must be held (unless extended by the offeror with the agreement of the offeree company or, in a competitive situation, with the consent of the Panel), provided that the date specified must be more than 21 days after the expected date of the court sanction hearing to be set out in the scheme circular.

(c) Any condition referred to in paragraph (b) above:

(i) must be given prominent reference in the offeror's announcement of a firm intention to make an offer;

(ii) must not be capable of being invoked or waived after the date specified unless extended by the offeror with the agreement of the offeree company or, in a competitive situation, with the consent of the Panel); and

(iii) will not be subject to Rule 13.5(a).

(d) The offeree company must ensure that the scheme circular sets out the expected timetable for the scheme, including the expected dates and times for the following:

(i) the record date for any shareholder meeting;

(ii) the latest date and time for the lodging of forms of proxy or elections for any alternative form of consideration;

(iii) the date and time of any shareholder meetings, which must normally be convened for a date which is at least 21 days after the date of the scheme circular;

(iv) the date and time of any meetings of the shareholders of the offeror to be convened in connection with the offer;

(v) the date of the court sanction hearing;

(vi) the record date for the purposes of the scheme;

(vii) the date and time of any proposed suspension in trading of shares or other securities of the offeree company;

(viii) the effective date;

(ix) the date and time of the admission to trading of any offeror securities to be issued in connection with the scheme; and

(x) the long-stop date.

(e) Upon publication of the scheme circular, the offeree company must announce that the scheme circular has been published and include in that announcement the expected timetable, including the expected dates and times referred to in paragraph (d) above.

(f) The offeree company must implement the scheme in accordance with the expected timetable, as published (subject to any change to the expected timetable announced in accordance with Section 6 below), unless:

(i) the board of the offeree company withdraws its recommendation of the scheme;

(ii) the board of the offeree company announces its decision to propose an adjournment of a shareholder meeting or the court sanction hearing;

(iii) a shareholder meeting or the court sanction hearing is adjourned; or

(iv) any condition to the scheme is invoked by the offeror in accordance with the Code.

See also Note 2 on Section 8 below.

(g) Except with the consent of the Panel, the offeror must:

(i) prior to the court sanction hearing, confirm to the offeree company and the Panel that all of the conditions to the offer have been either satisfied or waived, other than any conditions which are capable of being satisfied only upon or following the scheme being sanctioned (which conditions should normally be specified in the scheme circular); and

(ii) at the court sanction hearing, undertake to the court to be bound by the terms of the scheme insofar as it relates to the offeror.

The requirements in paragraphs (i) and (ii) will not apply if a condition relating to a material official authorisation or regulatory clearance is outstanding, provided that either:

- (A) it is not sufficiently clear what action would be required to be taken in order for the authorisation or clearance to be obtained; or
- (B) if it is sufficiently clear what action would be required to be taken in order for the authorisation or clearance to be obtained, the taking of that action would give rise to circumstances which are of material significance to the offeror in the context of the offer (see Rule 13.5(a)).

NOTE ON SECTION 3

Where a determination under Section 3(g) remains outstanding on the long-stop date

If a question as to whether the proviso to Section 3(g) has been satisfied remains outstanding on the long-stop date, the parties to the offer will normally be required to agree an extension to the long-stop date pending the final determination of the issue.

4 HOLDING STATEMENTS

(a) When an offeror has announced a firm intention to make an offer to be implemented by means of a scheme of arrangement and it has been announced that a potential competing offeror might make an offer (see Rules 2.6(d) and (e)), the Panel will normally require the potential offeror to clarify its position by no later than 5.00 pm on the seventh day prior to the date of the shareholder meetings.

(b) Where appropriate, however, taking into account all relevant factors, including:

- (i) the interests of offeree company shareholders and the desirability of clarification prior to the shareholder meetings; and
- (ii) the time which the potential offeror has had to consider its position,

the Panel may permit the potential offeror to clarify its position after the date of the shareholder meetings but before the date of the court sanction hearing.

(c) The Panel will announce the deadline by which clarification is required under paragraph (a) or (b) above.

5 ANNOUNCEMENTS FOLLOWING KEY EVENTS IN A SCHEME

(a) If the parties to the offer include any condition to the scheme in accordance with Section 3(b) above and any such condition is not capable of being satisfied by the date specified in that condition, the offeror must make an announcement as soon as practicable and, in any

event, by no later than 8.00 am on the business day following the date so specified, stating whether the offeror has invoked that condition, waived that condition or, with the agreement of the offeree company or with the consent of the Panel, specified a new date by which that condition must be satisfied.

(b) As soon as practicable after the votes on the relevant resolutions at the shareholder meetings and, in any event, by no later than 8.00 am on the business day following the shareholder meetings, the offeree company must make an announcement stating whether or not the resolutions were passed by the requisite majorities (and, if not, whether or not the scheme has lapsed) and giving details of the voting results in relation to the meetings, including:

(i) in the case of any general meeting of the offeree company convened to consider any resolution to approve or give effect to the scheme, if a poll was taken, the number of shares of each class which were voted for and against the resolutions and the percentage of the shares voted which those numbers represent; and

(ii) in the case of each court-convened meeting:

(A) the number of shareholders of the class who voted for and against the resolution to approve the scheme and the percentage of those voting shareholders which those numbers represent;

(B) the number of shares of the class which were voted for and against the resolution to approve the scheme and the percentage of the total shares voted which those numbers represent; and

(C) the percentage of the issued shares of the class which the shares voted for and against the resolutions represent.

(c) As soon as practicable following the court sanction hearing, the offeree company must make an announcement stating the decision of the court and including details of whether the scheme will proceed or has lapsed.

(d) As soon as practicable on the effective date, the offeree company or the offeror must make an announcement stating that the scheme has become effective.

6 CHANGES TO THE EXPECTED SCHEME TIMETABLE

(a) Any adjournment of a shareholder meeting or court sanction hearing, or a decision by the board of the offeree company to propose such an adjournment, must be announced promptly by the offeree

company. If the meeting or hearing is adjourned to a specified date, the announcement should set out the relevant details. If the meeting or hearing is adjourned without at the same time specifying a date for the adjourned meeting, a further announcement should be made once the new date has been set.

(b) Similarly, except with the consent of the Panel, any other change to the expected timetable of events set out in the scheme circular must be announced promptly by the offeror or offeree company (as appropriate).

(c) In all cases, the Panel should be consulted as to whether notice of an adjournment of any meeting or hearing or any other delay in, or change to, the expected timetable should, in addition, be sent to offeree company shareholders and persons with information rights.

7 REVISION

Any revision to a scheme of arrangement should normally be made by no later than the date which is 14 days prior to the date of the shareholder meetings (or any later date to which such meetings are adjourned). The consent of the Panel must be obtained if it is proposed to make any revision to a scheme either:

- (a) less than 14 days prior to the date of the shareholder meetings (or any later date to which such meetings are adjourned); or
- (b) following the shareholder meetings.

NOTE ON SECTION 7

Competitive situations

In the case of a competitive situation where one or more of the offerors is proceeding by way of a scheme of arrangement, see Note 2 on Rule 32.5.

8 SWITCHING

(a) With the consent of the Panel, the offeror may switch from a scheme of arrangement to a contractual offer or from a contractual offer to a scheme of arrangement, whether or not the offeror has reserved the right to change the structure of the offer.

(b) The Panel will determine the offer timetable that will apply following any switch to which it consents.

(c) The announcement of a switch must include:

- (i) details of all changes to the terms and conditions of the offer as a result of the switch;

- (ii) details of any material changes to the other details originally announced pursuant to Rule 2.7(c);
- (iii) an explanation of the 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 any person acting in concert with it will remain valid following the switch.

NOTES ON SECTION 8

1. Determination of the offer timetable following a switch

Factors which the Panel may take into account when determining the offer timetable that will apply following a switch include:

- (a) the time required to enable shareholders in the offeree company to reach a properly informed decision;*
- (b) the time which has elapsed since the switching offeror's original announcement under Rule 2.7 and the extent to which it is reasonable for the offeree board to be hindered in the conduct of its affairs;*
- (c) the views of the board of the offeree company and the switching offeror; and*
- (d) the likely effect of the new offer timetable on any competing offeror.*

2. Consequences of a withdrawal of recommendation etc.

Where:

- (a) the board of the offeree company withdraws its recommendation of the scheme;*
- (b) the board of the offeree company announces its decision to propose an adjournment to a shareholder meeting or the court sanction hearing;*
- (c) any shareholder meeting or the court sanction hearing is adjourned; or*
- (d) the Panel considers that the offeree company has not implemented the scheme in accordance with the published timetable,*

the Panel will normally consent to a request from the offeror to switch to a contractual offer with an acceptance condition set at up to 90% of the shares to which the offer relates.

9 ALTERNATIVE CONSIDERATION

(a) If a scheme of arrangement permits shareholders to elect to receive any alternative form of consideration, or to elect, subject to the election of others, to vary the proportions in which they receive different forms of consideration, the ability of shareholders to make such elections must not be closed off or withdrawn any 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, one week prior to that later date.

(b) A shareholder who has elected to receive a particular form of consideration in respect of any of its shares must be entitled to withdraw that election. However, this right 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.

NOTE ON SECTION 9

Rule 11.1

The obligation to make cash available under Rule 11.1 will be considered to have been met if, at the time the acquisition was made, shareholders were able to elect for cash consideration at a price per share not less than that required by Rule 11.1, even if such an election subsequently ceases to be available.

10 SETTLEMENT OF CONSIDERATION

Except with the consent of the Panel, the consideration must be sent to offeree company shareholders within 14 days of the effective date. The terms of the scheme must reflect this requirement.

11 RETURN OF DOCUMENTS OF TITLE

If an offer being implemented by way of a scheme lapses or is withdrawn, or if a shareholder withdraws its election for a particular form of consideration, all documents of title and other documents lodged with any form of election must be returned as soon as practicable (and in any event within seven days of such lapsing or withdrawal) and the receiving agent should immediately give instructions for the release of securities held in escrow.

12 VOTING BY CONNECTED EXEMPT PRINCIPAL TRADERS

Except with the consent of the Panel, securities owned by an exempt principal trader connected with an offeror or the offeree company must not be voted on a resolution put to shareholders in the offeree company to approve or to give effect to a scheme of arrangement. The Panel will normally grant its consent in the following circumstances:

- (a) an exempt principal trader connected with an offeror whose offer is being implemented by way of a scheme will normally be permitted to vote against the scheme but will not normally be permitted to vote in favour of it;
- (b) an exempt principal trader connected with a competing offeror (or potential offeror) will normally be permitted to vote in favour of such a scheme but will not normally be permitted to vote against it; and
- (c) an exempt principal trader connected with the offeree company will normally be permitted to vote in favour of or against the scheme.

13 SCHEMES WHICH DO NOT HAVE THE SUPPORT OF THE OFFEREE BOARD

The Panel should be consulted if an offeror is considering announcing an offer or possible offer which it is proposed will be implemented by means of a scheme of arrangement without, prior to such announcement, obtaining the support of the board of the offeree company.

14 INCORPORATION OF OBLIGATIONS AND RIGHTS

In addition to the relevant requirements of Rule 24 and Rule 25, the scheme circular must incorporate language which appropriately reflects those parts of Rule 13.6 (if applicable) and of this Appendix 7 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of offeree companies.

15 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS

Where securities are offered as consideration and it is intended that they should be admitted to listing on the Official List and/or to trading on a recognised investment exchange, the relevant admission to listing and/or trading condition should, 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 admission to listing or trading have been completed other than the FCA and/or the relevant recognised investment

exchange, as applicable, having announced their respective decisions to admit the securities to listing or trading. Where securities are offered as consideration and it is intended that they should be admitted to listing or to trading on any other investment exchange or market, the Panel should be consulted.

16 PROVISIONS DISAPPLIED IN A SCHEME

The following provisions of the Code do not apply to a scheme of arrangement:

- (a) Rule 4.5 (restriction on the offeree company accepting an offer in respect of treasury shares);
- (b) Rule 10 (the acceptance condition);
- (c) Note 3 on Rule 11.1 (when the obligation to offer cash is satisfied);
- (d) Rule 12 (long-stop date);
- (e) Rule 17 (announcement of acceptance levels);
- (f) Rule 18 (the use of proxies and other authorities in relation to acceptances);
- (g) Rule 24.7 (incorporation of obligations and rights);
- (h) Rule 24.10 (admission to listing and admission to trading conditions);
- (i) Rule 31 (timing of the offer);
- (j) Rule 32.1(c), Note 3 (paragraph (a)) and Note 4 on Rule 32.1 and Note 3 on Rule 32.2 (revision);
- (k) Rule 33 (alternative offers); and
- (l) Rule 34 (right of withdrawal).