

RULE 2. SECURITY BEFORE ANNOUNCEMENTS; THE TIMING AND CONTENTS OF ANNOUNCEMENTS

2.1 SECURITY

(a) Prior to the announcement of an offer or possible offer, all persons privy to confidential information, and particularly price-sensitive information, concerning the offer or possible offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if that person is made aware of the need for secrecy. All such persons must conduct themselves so as to minimise the chances of any leak of information.

(b) Financial advisers must at the very beginning of discussions warn clients of the importance of secrecy and security. Attention should be drawn to the Code, in particular to this Rule 2.1 and to restrictions on dealings.

2.2 WHEN AN ANNOUNCEMENT IS REQUIRED

An announcement is required:

(a) when a firm intention to make an offer is notified to the board of the offeree company by or on behalf of an offeror, irrespective of the attitude of the board to the offer;

(b) immediately upon an acquisition of any interest in shares which gives rise to an obligation to make an offer under Rule 9.1. The announcement that an obligation has been incurred should not be delayed while full information is being obtained; additional information can be the subject of a later supplementary announcement;

(c) when, following an approach by or on behalf of a potential offeror to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price;

(d) when, after a potential offeror first actively considers an offer but before an approach has been made to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation;

(e) when negotiations or discussions relating to a possible offer are about to be extended to include more than a very restricted number of people (outside those who need to know in the parties concerned and their immediate advisers); or

(f) when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company or when the board of a company is seeking one or more potential offerors, and:

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

NOTES ON RULE 2.2

1. Panel to be consulted

(a) *Whether or not a movement in the share price of a potential offeree company is untoward for the purposes of Rule 2.2(c), (d) and (f)(i) is a matter for the Panel to determine. The question will be considered in the light of all relevant facts and not solely by reference to the absolute percentage movement in the price. Facts which may be considered to be relevant in determining whether a price movement is untoward for the purposes of Rule 2.2(c), (d) and (f)(i) 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. This list is purely illustrative and the Panel will take account of such other factors as it considers appropriate. The percentage thresholds specified below in respect of price movements relate solely to the latest point at which consultation with the Panel is required; consultation will not necessarily lead to a requirement to make an announcement.*

(b) *In the case of Rule 2.2(c), unless an immediate announcement is to be made, the Panel should be consulted at the latest when the offeree company becomes the subject of any rumour and speculation or where there is a price movement of 10% or more above the lowest share price since the time of the approach. An abrupt price rise of a smaller percentage (for example, a rise of 5% in the course of a single day) could also be regarded as untoward and accordingly the Panel should be consulted in such circumstances.*

(c) *Similarly, in the case of Rules 2.2(d) and (f)(i), the Panel should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation or where there is a material or abrupt movement in its share price after the time when, in the case of Rule 2.2(d), an offer is first actively considered by a potential offeror or, in the case of Rule 2.2(f)(i), either the potential seller or the board starts to seek one or more potential purchasers or offerors.*

(d) *In the case of Rule 2.2(e), the Panel should be consulted if the potential offeror and/or the offeree company wish to approach a wider group than*

the very restricted number of people referred to in the Rule without making an announcement.

(e) In the case of Rule 2.2(f)(ii), the Panel should be consulted prior to more than one potential purchaser or offeror being sought.

2. Rumour and speculation during an offer period

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 company or the potential offeror (as appropriate), identifying that potential offeror.

3. When a dispensation may be granted

(a) The Panel may grant a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. If such a dispensation is granted, neither the potential offeror, nor any person who acted in concert with it, nor any person who is subsequently acting in concert with either of them, may:

- (i) within six months of the dispensation having been granted, do any of the things set out in Rules 2.8(a) to (f); or
- (ii) within three months of the dispensation having been granted, actively consider making an offer for the offeree company, make an approach to the board of the offeree company or acquire an interest in shares in the offeree company.

(b) After the end of the period referred to in paragraph (a)(ii) above the Panel will normally consent to the restrictions in paragraph (a)(i) above being set aside in the circumstances set out in paragraphs (a)(i) to (iv) of Note 2 on Rule 2.8, but during the period referred to in paragraph (a)(ii) above the Panel will normally consent to the restrictions in paragraphs (a)(i) and (a)(ii) above being set aside only in the circumstances set out in paragraphs (a)(ii) to (iv) of Note 2 on Rule 2.8.

(c) Where a potential offeror to which a dispensation has been granted under paragraph (a) has ceased actively to consider making an offer, the Panel may nonetheless require an announcement to be made where:

- (i) any rumour and speculation continues or is repeated; and/or
- (ii) it considers that this is otherwise necessary in order to prevent the creation of a false market.

Any such announcement made by the offeree company will not normally be required to identify the former potential offeror, unless it has been specifically identified in rumour and speculation.

2.3 RESPONSIBILITIES OF OFFERORS AND THE OFFEREE COMPANY

(a) Before a potential offeror approaches the board of the offeree company, the potential offeror is responsible for making any announcement required under Rule 2.2.

(b) When an obligation to make a mandatory offer under Rule 9.1 is incurred, the offeror is responsible for making the announcement required under Rule 2.2(b). See also Rule 7.1.

(c) Following an approach to the board of the offeree company, the offeree company is responsible for making any announcement required under Rule 2.2, except for an announcement required under Rule 2.2(b) or, where a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of a company without the involvement of the board of the offeree company, Rule 2.2(f) (in which case responsibility will rest with the potential seller of the interest).

(d) A potential offeror must not attempt to prevent the board of an offeree company from making an announcement relating to a possible offer, or publicly identifying the potential offeror, at any time the board considers appropriate.

2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

(a) An announcement by the offeree company which commences an offer period must identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected).

(b) Any subsequent announcement by the offeree company 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 company (see Rule 2.6(e)).

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

- (i) the date on which any deadline thereby set in accordance with Rule 2.6(a) will expire;
- (ii) a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk);
- (iii) details of any minimum level, or particular form, of consideration that any potential offeror(s) identified in the

announcement would be obliged to offer under Rule 6 or Rule 11 (as appropriate); and

(iv) details of any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert to which the offeree company or a potential offeror identified in the announcement is a party. See also Note 6(b) on Rule 8.

NOTES ON RULE 2.4

1. Announcement made without the agreement or approval of a potential offeror

If an announcement is made by the offeree company without the agreement or approval of a potential offeror:

(a) *the announcement is not required to include the matters referred to in Rule 2.4(c)(iii) and (iv), insofar as they relate to the potential offeror; and*

(b) *any potential offeror identified in the announcement must make a further announcement specifying the matters referred to in Rule 2.4(c)(iii) and (iv) (as appropriate) as soon as practicable thereafter.*

2. Minimum level, or particular form, of consideration

Where a potential offeror to which Rule 2.4(c)(iii) applies considers that an adjustment should be made under Note 1 on Rule 6 or under Rule 11.3, the Panel must be consulted as to the terms of the announcement.

3. Formal sale process

See Note 2 on Rule 2.6.

4. Persons acting in concert with a potential offeror

It may not be practicable for a potential offeror to make enquiries of all persons acting in concert with it prior to the announcement being made in order to confirm whether any details are required to be disclosed under Rule 2.4(c)(iii). In such circumstances, this fact should be stated and any relevant details should be announced as soon as practicable and in any event by no later than the deadline for the potential offeror's Opening Position Disclosure (see Note 2(a)(i) on Rule 8). The Panel should be consulted in all such cases.

2.5 TERMS AND PRE-CONDITIONS IN POSSIBLE OFFER ANNOUNCEMENTS

(a) **The Panel must be consulted in advance if, prior to the announcement of a firm intention to make an offer, any person proposes to make a statement in relation to the terms on which an offer might be made for the offeree company. If a potential offeror (or its directors, officials or advisers) makes such a statement and it is not withdrawn**

immediately if incorrect, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made, except where it specifically reserved the right not to be so bound in certain circumstances at the time the statement was made and those circumstances subsequently arise or in wholly exceptional circumstances. In particular:

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

(ii) where the statement concerned includes reference to the fact that the terms of the possible offer “will not be increased” or are “final” or uses a similar expression, the potential offeror will not be allowed subsequently to make an offer on better terms.

(b) The consequences of a statement to which Rule 2.5(a) applies will normally apply also to any person acting in concert with the potential offeror and to any person who is subsequently acting in concert with the potential offeror or such person.

(c) The Panel must be consulted in advance if a potential offeror proposes to include in a possible offer announcement any pre-conditions to the announcement of a firm intention to make an offer. Any such pre-conditional possible offer announcement must:

(i) clearly state whether or not the pre-conditions must be satisfied before a firm intention to make an offer can be announced or whether they are waivable; and

(ii) include a prominent warning to the effect that the announcement does not amount to 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-conditions are satisfied or waived.

NOTES ON RULE 2.5

1. Reservation of the right to set a statement aside or to vary the form and/or mix of consideration

(a) *The first announcement in which a statement subject to Rule 2.5(a) is made must contain prominent reference to any reservation to set it aside*

(precise details of which must be included). Any subsequent mention by the potential offeror of the statement must be accompanied by a reference to the reservation.

(b) Where a potential offeror has reserved the right to vary the form and/or mix of the consideration referred to in a statement to which Rule 2.5(a)(i) applies (but remains bound to a specified minimum level of consideration) and exercises that right, the value of any offer that is made subsequently must be the same as or better than the value of the consideration referred to in that statement, calculated as at the time of the announcement of the firm intention to make an offer. If, during the period ending when the market closes on the first business day after the announcement of the firm intention to make an offer, the value is not maintained, the Panel will be concerned to ensure that the offeror acted with all reasonable care in determining the consideration. If there is a restricted market in the securities offered, 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.

(c) 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. However, the offeror's ability to reduce the offer consideration by the amount of a specified dividend (or other distribution) will not be affected.

2. Duration of restriction

The restrictions imposed by Rule 2.5(a) will normally apply until the later of:

- (a) three months from the date on which the potential offeror makes a statement to which Rule 2.8 applies; and*
- (b) the end of the offer period.*

See also Rule 2.8(f).

3. Statements by the offeree company

Any statement made by the offeree company in relation to the terms on which an offer might be made must make clear whether or not it is being made with the agreement or approval of the potential 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 so made, the statement must also include a prominent warning to the effect that there can be no certainty that an offer will be made nor as to the terms on which any offer might be made.

4. Dividends

(a) *When an offeror makes a statement to which Rule 2.5(a)(i) 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 company to offeree company shareholders, unless, and to the extent that, the statement provides that offeree company shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.*

(b) *Where an offeror has made a statement to which Rule 2.5(a)(ii) applies and a dividend (or other distribution) is subsequently paid or becomes payable by the offeree company to offeree company 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 the offeree company shareholders remains the same, unless, and to the extent that, the offeror has stated that offeree company shareholders will be entitled to receive all or part of a specified dividend (or other distribution) in addition to the offer consideration.*

2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT

(a) **Subject to Rule 2.6(b), by not later than 5.00 pm on the 28th day following the date of the announcement in which it is first identified, or by not later than any extended deadline, 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 the 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 company. In such circumstances, the potential offeror will be required to clarify its intentions in accordance with Rule 2.6(d) below.**

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

- (i) **the status of negotiations between the offeree company and the potential offeror; and**

- (ii) the anticipated timetable for their completion.

Where the Panel consents to an extension of a deadline, the offeree company 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 Day 53, 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.

(See Section 4 of Appendix 7 where the first offeror is proceeding by means of a scheme of arrangement.)

(e) When an offeror has announced a firm intention to make an offer and the offeree company 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 Day 53, either:

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or
- (ii) confirm to the offeree company that it does not intend to make an offer, in which case the offeree company 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.

(See Section 4 of Appendix 7 where the first offeror is proceeding by means of a scheme of arrangement.)

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 company, the Panel will normally give its decision shortly before the time at which the deadline is due to expire. The board of the offeree company 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 company announces that it is seeking one or more potential offerors for the offeree company by means of a formal sale process, the Panel will normally grant a dispensation from the requirements of Rules 2.4(a) and (b) (but see Note 12 on Rule 8) and Rule 2.6(a), such that any potential offeror which agrees with the offeree company to participate in that process would not be required to be publicly identified under Rule 2.4(a) or (b) and would not be subject to the 28 day deadline referred to in Rule 2.6(a), for so long as it is participating in that process. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.

2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

(a) An offeror should announce a firm intention to make an offer only after the most careful and responsible consideration and when the offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.

(b) Following an announcement of a firm intention to make an offer, the offeror must proceed to make the offer unless, in accordance with the provisions of Rule 13.5, it is permitted to invoke a pre-condition to the making of the offer or would be permitted to invoke a condition to the offer if the offer were made. However, with the consent of the Panel, an offeror need not make the offer if a competing offeror subsequently announces a firm intention to make a higher offer.

(c) When a firm intention to make an offer is announced, the announcement must include:

- (i) the terms of the offer;**
- (ii) the identity of the offeror;**
- (iii) all conditions or pre-conditions to which the offer or the making of an offer is subject;**
- (iv) language which appropriately reflects that the offeror may only invoke any condition or pre-condition which is subject to Rule 13.5(a) with the consent of the Panel;**
- (v) a statement as to which conditions and pre-conditions are not subject to Rule 13.5(a) (see Rule 13.5(c));**
- (vi) a statement that any condition or pre-condition that is subject to Rule 13.5(a) may be waived by the offeror (see Rule 13.5(d));**

(vii) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or a condition to its offer and the consequences of its doing so, including details of any break fees payable as a result;

(viii) the intentions of the offeror with regard to the business, employees and pension scheme(s) of the offeree company (see Note 1);

(ix) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or in respect of which it has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see Note 5 on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell, any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

(x) details of any irrevocable commitment or letter of intent procured by the offeror or any person acting in concert with it (see Note 3 on Rule 2.10);

(xi) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold and details of any financial collateral arrangements which the offeror or any person acting in concert with it has entered into (see Note 3 on Rule 4.6);

(xii) details of any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert to which the offeror or any person acting in concert with it is a party;

(xiii) a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk);

(xiv) a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2;

(xv) 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

(xvi) 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 company to offeree company shareholders, unless, and to the extent

that, the announcement provides that offeree company shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.

(d) Where the offer is for cash, or includes an element of cash, the announcement must include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer. (The party confirming that resources are available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash was available.)

NOTES ON RULE 2.7

1. Intentions of the offeror with regard to the business, employees and pension scheme(s)

(a) For the purpose of Rule 2.7(c)(viii), the offeror must explain the long-term commercial justification for the offer and must state:

(i) its intentions with regard to the future business of the offeree company, including its intentions for any research and development functions of the offeree company;

(ii) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment or in the balance of the skills and functions of the employees and management;

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

(iv) its intentions with regard to employer contributions into the offeree company's pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members;

(v) its intentions with regard to any redeployment of the fixed assets of the offeree company; and

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

(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 company will have no repercussions on employment or the

location of the offeree company's 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 must also state its intentions with regard to its future business and comply with (a)(ii) and (iii) with regard to itself.

2. Persons acting in concert with the offeror

If an offeror announces a firm intention to make an offer before the deadline for its Opening Position Disclosure (see Note 2(a)(i) on Rule 8), it may not be practicable to have made enquiries of all persons acting in concert with it in order to include all relevant details in respect of such persons in the announcement. In such circumstances, this fact should be stated and all relevant details included in the Opening Position Disclosure. The Panel should be consulted in all such cases.

3. Reservations to a previous statement in relation to the terms of a possible offer

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. However, the offeror's ability to reduce the offer consideration by a specified dividend (or other distribution) which is subsequently paid by the offeree company to offeree company shareholders will not be affected.

2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

A person making a statement that it does not intend to make an offer for a company should make the statement as clear and unambiguous as possible. Except with the consent of the Panel, unless circumstances occur that the person specified in its statement as being circumstances in which the statement may be set aside, neither the person making the statement, nor any person who acted in concert with that person, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:

- (a) announce an offer or possible offer for the offeree company (including a partial offer which would result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of the offeree company);
- (b) acquire any interest in shares of the offeree company if any such person would thereby become obliged under Rule 9 to make an offer;
- (c) acquire any interest in, or procure an irrevocable commitment in respect of, shares of the offeree company if the shares in which such

person, together with any persons acting in concert with it, would be interested and the shares in respect of which it, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the voting rights of the offeree company;

(d) make any statement which raises or confirms the possibility that an offer might be made for the offeree company;

(e) take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the potential offeror and its immediate advisers; or

(f) 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 company.

Failure to comply with this Rule may lead to the period of six months referred to above being extended.

NOTES ON RULE 2.8

1. Prior consultation

Any person considering making such a statement should consult the Panel in advance.

2. Setting aside a statement to which Rule 2.8 applies

(a) *The circumstances that a person is permitted to specify in a statement to which Rule 2.8 applies as circumstances in which the statement may be set aside are:*

(i) subject to paragraph (b), the board of the offeree company so agreeing;

(ii) a third party (including another publicly identified potential offeror) announcing a firm intention to make an offer;

(iii) the offeree company announcing a Rule 9 waiver proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover;

(iv) the Panel determining that there has been a material change of circumstances; or

(v) where the statement is made outside an offer period, such other circumstances as the person may, with the Panel's prior consent, specify.

(b) *Where the statement to which Rule 2.8 applies is made after a third party has announced a firm intention to make an offer, the statement may specify the agreement of the board of the offeree company as a circumstance in which the statement may be set aside only to the extent that such agreement is given after that third party offer has been withdrawn or lapsed.*

(c) *Where the statement to which Rule 2.8 applies is made after a third party has announced a firm intention to make an offer and the person who made the statement, or any person acting in concert with it, acquires an interest in any shares in the offeree company in the period following the making of the statement and prior to the third party offer being withdrawn or lapsing, the agreement of the board of the offeree company may not be relied on as a reason to set aside the statement after the third party offer has been withdrawn or lapsed.*

(d) *Where the statement to which Rule 2.8 applies is made by a potential offeror which has made a statement to which Rule 2.5(a)(i) or (ii) applies and which did not reserve the right not to be bound by that statement with the agreement of the board of the offeree company, the board of the offeree company may not, except with the consent of the Panel, agree to the restrictions in Rule 2.8(f) being set aside until the later of:*

- (i) three months following the date on which the statement to which Rule 2.8 applies is made; and*
- (ii) the end of the offer period.*

3. Concert parties

The restrictions imposed by Rule 2.8 will not apply to a person acting in concert with the person making the statement to which the Rule applies provided it is made clear in the statement, or at the time the statement is made, that such person acting in concert is continuing to consider making an offer for the offeree company.

The restrictions imposed by Rule 2.8 will, however, normally apply to any person acting in concert with the person making the statement to which the Rule applies if the statement is made during an offer period.

4. Media reports

When considering the application of Rule 2.8, the Panel will take into account not only the statement itself but the manner of any subsequent public reporting of it.

Advisers must 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 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.

5. Significant asset purchases

(a) *In assessing whether assets are significant for the purpose of Rule 2.8(f), the Panel will normally have regard to:*

- (i) the aggregate value of the consideration for the assets compared with the aggregate market value of all the equity shares of the offeree company; and, where appropriate,*
- (ii) the value of the assets to be purchased compared with the total assets of the offeree company (excluding in each case cash and cash equivalents); and*
- (iii) the operating profit (i.e. profit before tax and interest and excluding exceptional items) attributable to the assets to be purchased compared with that of the offeree company.*

For these purposes, “equity” will be interpreted by reference to Note 3 on Rule 14.1.

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

- (i) for market value of the shares of the offeree company, 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 company or, where appropriate, a subsequent preliminary statement of annual results or half-yearly financial report.*

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

2.9 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE

(a) When an offer period begins, the offeree company must announce, as soon as possible and in any case by 7.15 am on the next business day, details of all classes of relevant securities issued by the company, together with the numbers of such securities in issue. An offeror or publicly identified potential offeror must also announce the same details relating to its relevant securities as soon as possible and in any case by 7.15 am on the business day following any announcement identifying it as an offeror or potential offeror, unless it has stated that its offer is likely to be solely in cash.

(b) Any such announcement should include, where relevant, the International Securities Identification Number (“ISIN”) for each relevant security.

(c) If the information included in an announcement made under this Rule changes during the offer period, a revised announcement must be made as soon as possible.

NOTES ON RULE 2.9

1. Options to subscribe

For the purposes of this Rule, options to subscribe for new securities in the offeree company or an offeror are not treated as a class of relevant securities.

2. Treasury shares

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

2.10 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

(a) During an offer period, if any party to the offer or any person acting in concert with it procures an irrevocable commitment or a letter of intent, the relevant party to the offer must:

- (i) announce the details in accordance with the Notes on this Rule 2.10; and
- (ii) publish the irrevocable commitment or letter of intent on a website,

by no later than 12 noon on the following business day.

(b) If any party to an offer 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:

- (i) announce the details in accordance with the Notes on this Rule 2.10; and
- (ii) publish the irrevocable commitment or letter of intent on a website,

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) If a person who has given an irrevocable commitment or a letter of intent either becomes aware that it 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 offer and the Panel of the up-to-date position. Upon receipt of such a notification, the relevant party to the offer must promptly make an appropriate announcement of the information notified to it together with all relevant details.

(d) See also Note 9 on the definition of acting in concert.

NOTES ON RULE 2.10

1. Disclosure in firm offer announcement

Where the details required to be announced under Note 3 on Rule 2.10 are, pursuant to Rule 2.7(c)(x), included in an announcement of a firm intention to make an 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, no separate announcement is required under Rule 2.10(a) or (b).

Similarly, where the details required to be announced under Note 3 on Rule 2.10 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, no separate announcement is required under Rule 2.10(b).

2. Method of disclosure

Disclosure under this Rule 2.10 should be made in accordance with the requirements of Rule 30.1. See also Rule 26 (documents to be published on a website).

3. Contents of announcement

An announcement of the procuring of an irrevocable commitment or a letter of intent must provide full details of the nature of the commitment or letter including:

(a) *the number of relevant securities of each class to which the irrevocable commitment or letter of intent relates;*

(b) *the identity of the person from whom the irrevocable commitment or letter of intent has been procured. For this purpose, the information which should be disclosed is that which would be required by Note 5 on Rule 8 if the person concerned were disclosing a dealing in relevant securities;*

(c) *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*

(d) *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, which terms the potential offeror will then be bound to in accordance with Rule 2.5(a).*

4. Letters of intent procured prior to the commencement of the offer period

Where a party to the offer has procured a letter of intent prior to the commencement of the offer period, it must be verified 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. This will normally include the shareholder or other person concerned providing an up-to-date written confirmation to the relevant party to the offer or its adviser.

2.11 DISTRIBUTION OF ANNOUNCEMENTS TO SHAREHOLDERS, EMPLOYEE REPRESENTATIVES (OR EMPLOYEES) AND PENSION SCHEME TRUSTEES

(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 must be:

- (i) sent by the offeree company to its shareholders, persons with information rights and the Panel; and
- (ii) made readily available by the offeree company to its employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of its pension scheme(s).

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

- (i) the offeree company must send a copy of that announcement, or a circular summarising the terms and conditions of the offer, to its shareholders, persons with information rights and the Panel and must make that announcement or circular readily available to the trustees of its pension scheme(s); and
- (ii) both the offeror and the offeree company must make that announcement, or a circular summarising the terms and conditions of the offer, readily available to their employee representatives (or,

where there are no employee representatives, to the employees themselves).

(c) Where necessary, the offeror or the offeree company, as the case may be, should explain the implications of the announcement and, in the case of the offeree company, the fact that addresses, electronic addresses and certain other information provided by offeree company shareholders, persons with information rights and other relevant persons for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under Section 4 of Appendix 4. Any circular published under this Rule should also include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk) and a telephone number for use by shareholders, persons with information rights and other relevant persons who wish to contact the offeree company regarding administrative matters.

(d) When, under (a) or (b) above, the offeree company makes a copy of an announcement or a circular summarising the terms and conditions of the offer available to its employee representatives (or employees) and to the trustees of its pension scheme(s), it must at the same time inform them of the right of employee representatives and pension scheme trustees (as the case may be) under Rule 25.9 to have a separate opinion appended to the offeree board circular. In addition, the offeree company must inform its employee representatives (or employees) of the offeree company's responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in their opinion.

NOTES ON RULE 2.11

1. Where a circular summarising an announcement made under Rule 2.7 is sent

Where, following an announcement made under Rule 2.7, a circular summarising the terms and conditions of the offer is sent or made readily available by the offeree company to its shareholders, persons with information rights, its employee representatives (or employees) or its pension scheme trustees, the full text of the announcement must be made readily and promptly available to them. In addition, the circular must give details of the website on which a copy of the announcement will be published in accordance with Rule 26.1.

2. Shareholders, persons with information rights and employee representatives (or employees) outside the UK, the Channel Islands and the Isle of Man

See the Note on Rule 30.4.

3. Holders of convertible securities, options or subscription rights

Copies of announcements sent to offeree company shareholders and persons with information rights under Rule 2.11 must also, where practicable, be sent simultaneously to 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. An explanation must also be provided that addresses, electronic addresses and certain other information provided for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under Section 4 of Appendix 4.