

## **RULE 24. OFFEROR DOCUMENTS**

### **24.1 THE OFFER DOCUMENT**

(a) Except with the consent of the Panel, the offeror must, within 28 days of the announcement of a firm intention to make an offer, send an offer document to shareholders in the offeree company and persons with information rights, in accordance with Rule 30.2. However, the offeror may only publish an offer document within the 14 days following the announcement of its firm intention to make an offer with the consent of the board of the offeree company.

(b) At the same time as the offer document is published:

(i) both the offeror and the offeree company must make the offer document readily available to their employee representatives (or, where there are no employee representatives, to the employees themselves); and

(ii) the offeror must make the offer document readily available to the trustees of the offeree company's pension scheme(s).

(c) In addition, the offeror must:

(i) publish the offer document on a website in accordance with Rule 26.1; and

(ii) announce that the offer document has been so published.

#### **NOTE ON RULE 24.1**

##### ***Pre-conditional offers***

*Where an offeror announces a firm intention to make an offer subject to one or more pre-conditions in accordance with Rule 13.3, the Panel will normally require the offer document to be published within 28 days of the last remaining pre-condition being either satisfied or waived.*

### **24.2 INTENTIONS OF THE OFFEROR WITH REGARD TO THE BUSINESS, EMPLOYEES AND PENSION SCHEME(S)**

(a) In the offer document, 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.

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

Except with the consent of the Panel:

(a) where the offeror is a company incorporated under the Companies Act 2006 (or its predecessors) and its shares are admitted to trading on a UK regulated market or on AIM or the AQSE Growth Market, the offer document must contain:

(i) the names of its directors;

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

(iii) 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;

(iv) details of the website address where any preliminary statement of annual results, half-yearly financial report or interim financial information published since the date of its last published audited

accounts have 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;

(v) in the case of a securities exchange offer, a description of any known significant change 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 provide an appropriate negative statement;

(vi) a statement of the effect of full acceptance of the offer upon its earnings and assets and liabilities; and

(vii) 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;

(b) if the offeror is other than a company referred to in (a) above, the offer document must contain:

(i) in respect of the offeror, the information described in (a) above (so far as appropriate) and such further information as the Panel may require (see Note 2);

(ii) in respect of any person who has made (or proposes to make or increase) an investment in the offeror for the purposes of the offer such that the person will have an indirect interest in any of the equity share capital of the offeree company, details of the person's identity and interest in the offeror and such further information as the Panel may require (see Note 2); and

(iii) in respect of any person not included in (ii) above whose pre-existing interest in the offeror is such that the person has a potential direct or indirect interest of 5% or more in the equity share capital of the offeree company, details of the person's identity and interest in the offeror and such further information as the Panel may require (see Note 2);

(c) the offer document must contain summary details of any current ratings and outlooks publicly accorded to the offeror and the offeree company 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;

**(d) the offer document (including, where relevant, any revised offer document) must include:**

**(i) a heading stating “If you are in doubt about this offer you should consult an independent financial adviser authorised under the FSMA”;**

**(ii) the date when the document is published, the name and address of the offeror (including, where the offeror is a company, the type of company and the address of its registered office);**

**(iii) the identity of any person acting in concert with the offeror and, to the extent that it is known, the offeree company, including, in the case of a company, its type, registered office and relationship with the offeror and, where possible, with the offeree company. (See Note 3);**

**(iv) details of each class of security 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, including the consideration offered for each class of security, the total consideration offered and particulars of the way in which the consideration is to be paid in accordance with Rule 31.9 or, in the case of a scheme of arrangement, Section 10 of Appendix 7;**

**(vi) all conditions to which the offer is subject;**

**(vii) language which appropriately reflects that the offeror may only invoke any condition which is subject to Rule 13.5(a) with the consent of the Panel;**

**(viii) a statement as to which conditions are not subject to Rule 13.5(a) (see Rule 13.5(c));**

**(ix) a statement that any condition that is subject to Rule 13.5(a) may be waived by the offeror (see Rule 13.5(d));**

**(x) particulars of all documents required, and procedures to be followed, for acceptance of the offer or, in the case of a scheme of arrangement, for voting;**

**(xi) the middle market quotations for the securities to be acquired, and (in the case of a securities exchange offer) 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 available date before the publication of the offer document, together with the source (or, if any of the securities are not admitted to trading, any information available as to the number and price of transactions which have taken place during the preceding six**

months, together with the source, or an appropriate negative statement);

(xii) 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 condition to its offer and the consequences of its doing so, including details of any break fees payable as a result;

(xiii) details 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 company (or, if appropriate, the offeror) (see Note 3 on Rule 2.10);

(xiv) 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 securities 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 company's shareholders; and details of any applications for admission to listing or admission to trading that have been or will be made in any jurisdiction in respect of the securities;

(xv) a summary of the provisions of Rule 8 (see the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk));

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

(xvii) the compensation (if any) offered for the rights which might be removed as a result of any opting-in resolution under Chapter 2 of Part 28 of the Act together with particulars of the way in which the compensation is to be paid and the method employed in determining it;

(xviii) any post-offer undertaking made by the offeror (see Rule 19.5);

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

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

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

(e) the offer document must contain information on the offeree company on the same basis as set out in (a)(i) to (v) above;

(f) the offer document must contain a description of how the offer is to be financed and the source(s) of the finance. Details must 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 company 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 financing banks; 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; and

(g) if any document published by the offeror contains a comparison of the value of the offer with previous prices of the offeree company’s shares, a comparison between the current value of the offer and the price of the offeree company’s shares on the last business day prior to the commencement of the offer period must be prominently included, no matter what other comparisons are made.

### **NOTES ON RULE 24.3**

#### **1. Where the offeror is a subsidiary company**

*The Panel will normally look through subsidiaries whose securities are not admitted to trading in interpreting this Rule unless, with the agreement of the Panel, the subsidiary in question is regarded as being of sufficient substance in relation to the group and the offer. Accordingly if the offeror is part of a group, information will normally be required on the ultimate holding company in the form of group accounts.*

#### **2. Further information requirements**

*(a) Whilst the information required to be disclosed under paragraphs (i), (ii) or (iii) of Rule 24.3(b) will depend on the circumstances of the case, it should normally include a general description of the business interests of the offeror and/or other person(s) concerned and details of those assets which may be relevant to the business of the offeree company.*

(b) *Where a person has a potential indirect interest of 5% or more in the equity share capital of the offeree company solely as a result of being an investor in a limited partnership or other investment fund which is interested in the securities of the offeror, the details specified in paragraph (iii) of Rule 24.3(b) will be required to be disclosed in the offer document only if that person is, or is presumed to be, acting in concert with the offeror.*

(c) *The Panel must be consulted in any case to which Rule 24.3(b) applies or may apply.*

(d) *Where information is incorporated into the offer document by reference to another source, the Panel will normally require that information to be available in the English language.*

### **3. Persons acting in concert**

*For the purposes of Rule 24.3(d)(iii), the identity of a person acting in concert with the offeror or the offeree company must be disclosed if the offeree company shareholders need details of that person in order to reach a properly informed decision on the offer. Disclosure will normally include: a person who is interested in shares in the offeree company and (in the case of a securities exchange offer only) the offeror; any person with whom the offeror or the offeree company and any person acting in concert with either of them has any arrangement of the kind referred to in Note 11 on the definition of acting in concert; any financial adviser which is advising the offeror or the offeree company in relation to the offer; and any corporate broker to either of them. In cases of doubt, the Panel should be consulted.*

### **4. Offers made under Rule 9**

*When an offer is made under Rule 9, the information required under Rule 24.3(d)(v) must include the method employed under Rule 9.5 in calculating the consideration offered.*

## **24.4 INTERESTS AND DEALINGS**

### **(a) The offer document must state:**

**(i) details of any relevant securities of the offeree company in which the offeror has an interest or in respect of which it has a right to subscribe, 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 or any delivery obligation or right to require another person to purchase or take delivery, must also be stated;**

**(ii) the same details as in (i) above in relation to each of:**

**(A) the directors of the offeror;**

- (B) any other person acting in concert with the offeror; and
- (C) any person with whom the offeror or any person acting in concert with the offeror has any arrangement of the kind referred to in Note 11 on the definition of acting in concert;

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

(iv) details of any relevant securities of the offeree company and (in the case of a securities exchange offer only) the offeror which the offeror or any person acting in concert with it has borrowed or lent (including for these purposes any financial collateral arrangements of the kind referred to in Note 3 on Rule 4.6), save for any borrowed shares which have been either on-lent or sold.

(b) If, in the case of any of the persons referred to in Rule 24.4(a), there are no interests or short positions to be disclosed, this fact should be stated. This will not apply to category (a)(ii)(c) if there are no such arrangements.

(c) If any person referred to in Rule 24.4(a) has dealt in any relevant securities of the offeree company (or, in the case of a securities exchange offer only, of the offeror) during the period beginning 12 months prior to the offer period and ending with the latest practicable date prior to the publication of the offer document, the details, including dates, must be stated (see Note 5 on Rule 8). If no such dealings have taken place, this fact should be stated.

#### **NOTES ON RULE 24.4**

##### **1. Directors**

*In the case of directors, the disclosure should include details of all interests, short positions and borrowings of any other person whose interests in shares the director is taken to be interested in pursuant to Part 22 of the Companies Act 2006 and related regulations.*

##### **2. Aggregation**

*There may be cases where no useful purpose would be served by listing a large number of transactions. In such cases the Panel will 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 that 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 publication of the offer documentation and the full list of dealings should be published on a website in accordance with Rule 26.3.*

### **3. Connected fund managers and connected principal traders**

*Interests in relevant securities and short positions of non-exempt connected fund managers and connected principal traders and their dealings since the date 12 months prior to the offer period will need to be disclosed under Rule 24.4(a)(ii)(b) and Rule 24.4(c) respectively.*

### **4. Competing offerors**

*Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rule 24.4(a)(iii) and (iv), Rule 24.4(b) and Rule 24.4(c) must be included in relation to the relevant securities of each securities exchange offeror or potential offeror.*

## **24.5 DIRECTORS' EMOLUMENTS**

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

### **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.*

## 24.6 SPECIAL ARRANGEMENTS

Unless otherwise agreed with the Panel, the offer document must contain a statement as to whether or not any agreement, arrangement or understanding (including any compensation arrangement) exists between the offeror or any person acting in concert with it and any of the directors, recent directors, shareholders or recent shareholders of the offeree company, or any person interested or recently interested in shares of the offeree company, having any connection with or dependence upon the offer, and full particulars of any such agreement, arrangement or understanding.

See also Rule 16.2.

## 24.7 INCORPORATION OF OBLIGATIONS AND RIGHTS

The offer document must state the time allowed for acceptance of the offer and any alternative offer and must incorporate language which appropriately reflects Notes 4–8 on Rule 10.1 and those parts of Rule 13.6 (if applicable), Rule 31, Rule 32, Rule 33 and Rule 34 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of offeree companies.

### NOTES ON RULE 24.7

#### 1. *Incorporation by reference*

*A suitable cross reference to Notes 4–6 and Note 8 on Rule 10.1 is regarded as being sufficient appropriately to reflect those Notes but cross references to other provisions of the Code are not permitted.*

#### 2. *Rule 31.7(b)*

*Rule 24.7 does not apply to the requirement, imposed by Rule 31.7(b), that an announcement as to whether the offer is unconditional or has lapsed should be made by 5.00 pm on the unconditional date. Accordingly this requirement should not be reflected in the terms of the offer.*

## 24.8 CASH CONFIRMATION

When the offer is for cash or includes an element of cash, the offer document must include confirmation by an appropriate third party (eg the offeror's bank or financial adviser) 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.)

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

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

## **24.10 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS**

(a) 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 the decision to admit the securities to listing or trading has been announced by the FCA and/or the relevant recognised investment exchange, as applicable.

(b) 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.

(c) In the case of a scheme of arrangement see Section 15 of Appendix 7.

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

When the offer involves the issue of securities of a class which is not admitted to trading, the offer document and any subsequent circular from the offeror must contain an estimate of the value of such securities by an appropriate adviser.

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

The offer document must 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 otherwise be, or claim to be, entitled against such shareholder.

The Panel would only grant consent in exceptional circumstances and where all shareholders were to be treated similarly.

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

The offer document must disclose any arrangements of the kind referred to in Note 11 on the definition of acting in concert which exist between the offeror, or any person acting in concert with the offeror, and any other person; if there are no such arrangements, this should be stated.

#### **24.14 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 company to offeree company shareholders, unless, and to the extent that, offeree company shareholders are entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.

(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 company shareholders will be entitled to receive and retain that dividend (or other distribution).

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

(a) In addition to the requirements under Rules 24.3(a)(iii) and (iv) (and, insofar as they refer to Rules 24.3(a)(iii) and (iv), Rules 24.3(b) and (e)) for certain information to be incorporated into an offer document by reference to a website, information that is required to be included in a document under other Rules may be incorporated by reference to another source with the Panel's consent.

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

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

(c) If a person is sent a document which incorporates information by reference to another source, that person may request a copy of the information so incorporated in hard copy form. If such a request is made, the party which published the document must 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 the relevant party.

(d) Any document which incorporates information by reference to another source (and any related website notification) must contain a statement that a shareholder, person with information rights or other person to whom it is sent may request a copy of any such information in hard copy form. Attention should be drawn to the fact that a hard copy of the information will not be sent to that person unless requested and details must be provided of how a hard copy may be obtained (including an address in the United Kingdom and a telephone number to which requests may be submitted).

**NOTE ON RULE 24.15**

**Source of information incorporated by reference**

*Where a document incorporates information by reference to other sources, a consolidated list of all such information and sources must be provided including, in each case, details of where the information may be located (for example, providing 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, for example, "in the company's annual report and accounts" or "on the company's website" will not be sufficient.*

**24.16 FEES AND EXPENSES**

(a) The offer document must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeror in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to:

- (i) financing arrangements;
- (ii) financial and corporate broking advice;
- (iii) legal advice;
- (iv) accounting advice;
- (v) public relations advice;
- (vi) other professional services (including, for example, management consultants, actuaries and specialist valuers); and

(vii) other costs and expenses.

(b) Where any fee is variable between defined limits, a range must be given in respect of the aggregate fees and expenses and of the fees and expenses of each relevant category, setting out the expected maximum and minimum amounts payable. See Note 2.

(c) Where the fees and expenses payable within a particular category are likely to exceed the estimated maximum previously disclosed by 10% or more, the offeror must promptly disclose to the Panel revised estimates of the aggregate fees and expenses expected to be incurred in relation to the offer and of the fees and expenses expected to be incurred within that category. The Panel may require such revised estimates to be announced where it considers this to be appropriate.

(d) Where the final fees and expenses actually paid within a particular category exceed the amount publicly disclosed as the estimated maximum payable by 10% or more, the offeror must promptly disclose to the Panel the final amount paid in respect of that category. The Panel may require such final amount to be announced where it considers this to be appropriate.

#### **NOTES ON RULE 24.16**

##### **1. Financing fees and expenses**

*Full details should be given of any fees and expenses payable, or estimated to be payable in relation to:*

- (a) *entering into any financing commitment; and*
- (b) *drawing down any financing.*

*Any commitment fees should normally be disclosed by means of describing the principal amounts of the financing facilities and the annual percentage rate applicable for the period of time between commitment and drawdown. A cross-reference to the description of how the offer is to be financed, as required under Rule 24.3(f), will normally be sufficient.*

##### **2. Variable and uncapped fee arrangements**

*Where a fee is variable or is not subject to a maximum amount, this should be stated and an indication of the nature of the arrangement given (for example, whether the amount of the fee is discretionary, relates to the outcome or final value of the offer or will be calculated on a “time cost” or other basis).*

*Where a particular category of fees and expenses includes a variable or uncapped element, the figure or range given should reflect a reasonable estimate of the fees likely to be paid on the basis of the terms of the then current offer.*

*Where a fee arrangement provides for circumstances in which the fee will or may increase, for example where the offer is revised or a competitive situation arises, the higher amount will not be required to be disclosed unless and until such circumstances arise.*

**3. Fees payable to supervisors appointed under Rule 19.5(i)**

*There is no requirement to disclose an estimate of any fees and expenses expected to be incurred in relation to a supervisor appointed under Rule 19.5(i).*