

## **RULE 28. PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

*NB The requirements of Rule 28 do not apply to a profit forecast or a quantified financial benefits statement published by a cash offeror.*

### **28.1 REQUIREMENTS FOR PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

(a) Except with the consent of the Panel, if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror publishes a profit forecast or a quantified financial benefits statement, the document or announcement in which the forecast or statement is first published must include:

- (i) a report from its reporting accountants stating that, in their opinion, the forecast or statement has been properly compiled on the basis stated and (in the case of a profit forecast only) that the basis of accounting used is consistent with the company's accounting policies; and
- (ii) a report from its financial adviser(s) stating that, in its (or their) opinion, the forecast or statement has been prepared with due care and consideration.

(b) Except with the consent of the Panel, if the offeree company or a securities exchange offeror published a profit forecast before the offer period commenced but after it received or made an approach with regard to a possible offer, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must repeat the profit forecast and include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

(c) Except with the consent of the Panel, and subject to Note 3 (management buy-outs and offers by controllers), if the offeree company or a securities exchange offeror published a profit forecast before it received or made an approach with regard to a possible offer, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must:

- (i) repeat the profit forecast and include a statement by the directors that it remains valid and confirmations by the directors that the profit forecast has been properly compiled on the basis of the assumptions stated and that the basis of accounting used is consistent with the company's accounting policies (the "directors' confirmations"); or

(ii) include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case; or

(iii) include a new profit forecast for the relevant period and the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

(d) See also Rule 28.2(b).

### **NOTES ON RULE 28.1**

#### **1. Targets etc.**

*A statement described as a “target”, “budget” or similar will normally be treated as a profit forecast, even if it is stated that it is not an indication of the likely level of profits, unless it is clear that the statement is no more than aspirational.*

#### **2. Ordinary course profit forecasts**

(a) *Subject to Note 3, if the offeree company or a securities exchange offeror published an ordinary course profit forecast at any stage before the offer period commenced, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must satisfy the requirements of Rule 28.1(c)(i), (ii) or (iii) (as appropriate).*

(b) *Subject to Note 3, if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror publishes an ordinary course profit forecast, the document or announcement in which the ordinary course profit forecast is first published must normally include the reports from its reporting accountants and financial adviser(s) required by Rule 28.1(a)(i) and (ii). However, with the agreement of each of the other parties to the offer, the Panel will normally consent to the disapplication of the requirement for reports, in which case the document or announcement must include the directors’ confirmations required by Rule 28.1(c)(i).*

(c) *The Panel must be consulted if the offeree company or a securities exchange offeror considers that a profit forecast should be treated as an ordinary course profit forecast.*

#### **3. Management buy-outs and offers by controllers**

*Where the offer is a management buy-out or similar transaction or is being made by the existing controller or group of controllers:*

(a) *the Panel will not normally grant a dispensation from the requirements of Rule 28.1(a) or (b) (as appropriate) with regard to any profit forecast (including an ordinary course profit forecast) by the offeree company for a*

*financial period ending 15 months or less from the date on which the profit forecast is, or was, first published; and*

*(b) where the profit forecast was published by the offeree company before it received an approach with regard to a possible offer, the offer document, or any earlier document or announcement published during the offer period in which the profit forecast is referred to, will normally be required to repeat the profit forecast and include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).*

#### **4. Where the application of Rule 28 would be disproportionate or otherwise inappropriate**

*(a) The Panel may grant a dispensation from the requirements of Rule 28 if it considers that the application of the Rule to the profit forecast would be disproportionate or otherwise inappropriate, for example:*

*(i) where the profit forecast states only a maximum figure for the likely level of profits for a particular financial period; or*

*(ii) in the case of an offeror, where the consideration securities will not represent a material proportion of its enlarged share capital or, alternatively, a material proportion of the value of the offer.*

*(b) Factors which the Panel might take into account when considering whether to grant a dispensation under paragraph (a) above include:*

*(i) the reason for the publication of the profit forecast, including whether it was (or would be) an ordinary course profit forecast (see Note 2);*

*(ii) whether the terms of the profit forecast are general or specific;*

*(iii) whether the offer has been recommended by the board of the offeree company and (in the case of an offeror) whether a competing offer or possible offer has been announced; and*

*(iv) in the case of paragraph (a)(i) (i.e. a profit “ceiling”), whether the offer is a management buy-out or similar transaction or is being made by an existing controller or group of controllers of the offeree company.*

#### **5. Profit forecast for part of a business**

*Except with the consent of the Panel, Rule 28 applies in the same way to a profit forecast which relates to any part of the business of the offeree company or a securities exchange offeror as to a profit forecast which relates to the group as a whole.*

## **6. Investment analyst and other third party forecasts**

*Except as provided in Rule 28.7 and Rule 28.8, if in any document or announcement the offeree company or a securities exchange offeror refers to or quotes from a profit forecast relating to it published by an investment analyst or other third party, including a consensus forecast, it will be treated as having endorsed and published that profit forecast. The requirements of Rule 28.1 will then apply.*

## **28.2 PROFIT FORECASTS FOR FUTURE FINANCIAL PERIODS**

**(a)** The Panel will normally grant a dispensation from the requirement to include reports from reporting accountants and the financial adviser(s) in the case of a profit forecast for a financial period ending more than 15 months from the date on which it is, or was, first published. Where such a dispensation is granted, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to or first published, must include the directors' confirmations referred to in Rule 28.1(c)(i). Alternatively, in the case of a profit forecast which was published before the offer period commenced, the document or announcement may include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case.

**(b)** Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror either publishes for the first time or repeats a profit forecast for a future financial year, the document or announcement must include a corresponding profit forecast for the current financial year and for each intervening financial year. The requirements of Rule 28.1(a), (b) or (c)(i) (as appropriate) will apply to each such forecast for a financial year ending 15 months or less from the date on which it is, or was, first published and the requirements of Rule 28.2(a) will normally apply to each such forecast for a financial year ending more than 15 months from the date on which it is, or was, first published.

### **NOTE ON RULE 28.2**

#### ***Other financial periods***

*The requirements of Rule 28.2(b) will also apply where the offeree company or a securities exchange offeror publishes a profit forecast for a financial period other than a financial year.*

### **28.3 COMPILATION OF PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

(a) Any profit forecast or quantified financial benefits statement must be properly compiled and must be prepared with due care and consideration. The profit forecast or quantified financial benefits statement, and the assumptions on which it is based, are the responsibility of the relevant party to the offer and its directors.

(b) A profit forecast (and the assumptions stated) or a quantified financial benefits statement (and the details included in accordance with Rule 28.6) must be:

(i) understandable: it must not be so complex or include such extensive disclosure that it cannot be readily understood;

(ii) reliable: it must be supported by a thorough analysis of the offeree company's and/or the offeror's business and must represent factual and not hypothetical strategies, plans and risk analysis; and

(iii) comparable (in the case of a profit forecast only): it should be capable of justification by comparison with outcomes in the form of historical financial information.

(c) A forecast of profit before tax should disclose separately any non-recurrent items and tax charges if they are expected to be abnormally high or low.

### **28.4 ASSUMPTIONS AND BASES OF BELIEF**

(a) When a profit forecast is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement must include the principal assumptions on which the profit forecast is based.

(b) The assumptions included for a profit forecast or bases of belief included for a quantified financial benefits statement should provide useful information as to its reasonableness and reliability. They must:

(i) be readily understandable;

(ii) be specific and precise; and

(iii) not relate to the general accuracy of the estimates underlying the profit forecast or the quantified financial benefits statement.

(c) There must be a clear distinction between assumptions or bases of belief about factors which the directors (or other members of the company's management) can influence and those which they cannot influence.

## 28.5 PROFIT ESTIMATES

Rule 28.1 does not apply to a profit estimate included in:

- (a) a preliminary statement of annual results which complies with the relevant provisions of the FCA Handbook;
- (b) a half-yearly financial report which complies with the relevant provisions of the FCA Handbook, the AIM Rules for Companies or the AQSE Growth Market Rules for Issuers; or
- (c) an interim management statement, or other interim financial information, which is published by virtue of a regulatory requirement and which has been prepared in accordance with the reporting framework set out in International Accounting Standard 34.

### NOTES ON RULE 28.5

#### 1. Preliminary statements of annual results

*Where an unaudited preliminary statement of annual results is published by an offeree company or a securities exchange offeror whose securities are admitted to trading on a recognised investment exchange but to which the relevant provisions of the FCA Handbook do not apply, the Panel may nonetheless treat the exemption from the requirements of Rule 28.1 as applying if it is satisfied that the statement complies with the substance of those provisions.*

#### 2. Other circumstances in which a dispensation may be granted

*Where an offeree company or a securities exchange offeror publishes, or has published, a profit estimate in accordance with a regulatory requirement which does not qualify for an exemption under Rule 28.5, the Panel may, in appropriate circumstances, grant a dispensation from the requirements of Rule 28.1 (for example, where an overseas company prepares a half-yearly financial report under a framework equivalent to that in IAS 34 and consistent with that which it adopts for its statement of annual results). The Panel should be consulted in such cases.*

## 28.6 DISCLOSURE REQUIREMENTS FOR QUANTIFIED FINANCIAL BENEFITS STATEMENTS

When a quantified financial benefits statement is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement must include:

- (a) the bases of belief supporting the statement (identifying the principal assumptions and sources of information);

- (b) an analysis, explanation and quantification of the constituent elements sufficient to enable the context and relative importance of those elements to be understood;
- (c) a base figure where any comparison is made with historical financial performance or with existing cost bases and structures;
- (d) details of any disbenefits expected to arise;
- (e) in the case of a statement falling under paragraph (a) of the definition of a “quantified financial benefits statement”, a statement that the expected financial benefits will accrue as a direct result of the success of the offer and could not be achieved independently of the offer;
- (f) an indication of when the financial benefits are expected to be realised;
- (g) an indication of whether the expected financial benefits will be recurring, clearly identifying any non-recurring benefit(s); and
- (h) the recurring and non-recurring costs of realising the expected financial benefits.

#### **NOTES ON RULE 28.6**

##### **1. Cost saving measures announced before the offer period**

(a) *Cost saving measures published by the offeree company prior to the offer period are not subject to Rule 28, even if they are repeated by the offeree company during the offer period. However, if, during the offer period, the offeree company revises any cost saving measures published prior to the offer period, the revised cost saving measures will be treated as a quantified financial benefits statement, such that Rule 28.1(a) will then apply.*

(b) *The Panel should be consulted if an offeree company proposes to publish a statement with regard to new cost saving measures after it has received an approach but prior to the commencement of an offer period. If the Panel considers that the new cost saving measures are being published as a result of the approach, it may determine that the statement should be treated as if it were a quantified financial benefits statement published during the offer period, save that compliance with the requirements of Rule 28.1(a) may be deferred until the publication of the offeree board circular.*

##### **2. Statements by the offeree company**

(a) *The Panel will not normally permit an offeree company to publish a statement quantifying the financial benefits expected to accrue from an offer by a particular offeror unless the statement is published with the consent of that offeror, in which case the requirements of Rule 28.1 will apply. However,*

*the offeree company will be permitted to publish its views on any quantified financial benefits statement published by an offeror.*

*(b) In relation to a statement made in the circumstances described in the Note on the definition of “quantified financial benefits statement”, the Panel will normally consider that the requirements of Rules 28.6(a), (b), (f) and (h) are applicable to that statement.*

## **28.7 PUBLICATION OF INVESTMENT ANALYSTS’ FORECASTS ON WEBSITES**

**(a) Where, during the offer period, the offeree company or a securities exchange offeror publishes on its website profit forecasts relating to it that are derived from investment analysts’ forecasts, the forecasts on the website must be based on all forecasts provided by investment analysts who have published such forecasts, excluding:**

- (i) any forecasts which pre-date the publication of the company’s latest preliminary statement of annual results or half-yearly financial report (as appropriate); and**
- (ii) any forecasts by investment analysts whose employer is controlled by, controls or is under the same control as any party to the offer or a connected adviser to any party to the offer.**

**(b) In addition to the exclusions in paragraph (a), an investment analyst’s forecast may exceptionally be excluded from the forecasts on the company’s website if it is wholly anomalous or has been prepared on a wholly different basis from that of the other investment analysts.**

**(c) Except with the consent of the Panel, the following requirements must be complied with (failing which, all investment analysts’ forecasts must be removed from the website upon the commencement of the offer period):**

- (i) for each line in respect of which forecasts are published on the website, the highest and lowest figures forecast by any investment analyst must be stated, together with the arithmetic mean of all investment analysts’ forecasts (a “consensus forecast”);**
- (ii) the name of each organisation whose forecasts have been included in the calculation of the consensus forecast, and the dates of the forecasts, must be stated;**
- (iii) if any analyst’s forecast has been excluded from the calculation of the consensus forecast, the name of the organisation, the date of the forecast and the reason for its exclusion, must be stated;**
- (iv) during the offer period, the relevant section of the website must be kept up-to-date by including any new forecasts promptly after**



their publication and promptly excluding any forecasts which pre-date the publication of the latest preliminary statement of annual results or half-yearly financial report; and

(v) it must be prominently stated that the investment analysts' forecasts are not endorsed by the company and that they have not been reviewed or reported on in accordance with the requirements of Rule 28.1(a).

(d) Subject to Rule 28.8, any reference to or quotation from a consensus or other third party forecast, other than publishing investment analysts' forecasts on a website in accordance with the requirements of this Rule 28.7, will be subject to Note 6 on Rule 28.1.

#### **NOTE ON RULE 28.7**

##### **Source data**

*Where party B has published consensus forecasts on its website in accordance with Rule 28.7, and party A wishes to refer to those consensus forecasts in accordance with Rule 28.8, the source data used by party B to compile the consensus forecasts must, on request, promptly be made available to party A.*

### **28.8 REFERENCES TO CONSENSUS FORECASTS RELATING TO ANOTHER PARTY TO THE OFFER**

(a) Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), a party to the offer ("party A") wishes to refer to investment analysts' forecasts relating to any other party to the offer ("party B"), party A must refer to either:

- (i) a consensus forecast (see Rule 28.7(c)) published on party B's website in accordance with the requirements of Rule 28.7; or
- (ii) if no such consensus forecast has been published on party B's website, a consensus forecast compiled by party A in accordance with the requirements of Rule 28.7.

(b) Where party A has referred to a consensus forecast relating to party B, any subsequent reference to that consensus forecast by party B will not be subject to Rule 28.1(a), provided that party B does not endorse the consensus forecast.

(c) Any document or announcement which includes a reference by party A to a consensus forecast relating to party B must make clear whether or not the reference is being made with the agreement or approval of party B. Where the consensus forecast is referred to in any document or announcement which is published by party A with the agreement or approval of party B, or at a time when the offer is a

**recommended offer, the consensus forecast will be treated as having been endorsed and published by party B and Rule 28.1(a) will therefore apply.**