RULE 9. THE MANDATORY OFFER AND ITS TERMS

9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT

Except with the consent of the Panel, when:

(a) any person acquires an interest in shares which (taken together with shares in which the person or any person acting in concert with that person is interested) carry 30% or more of the voting rights of a company; or

(b) any person, together with persons acting in concert with that person, is interested in shares which in the aggregate carry not less than 30% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights and such person, or any person acting in concert with that person, acquires an interest in any other shares which increases the percentage of shares carrying voting rights in which that person is interested,

such person shall extend offers, on the basis set out in Rule 9.3 and Rule 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any other class of transferable securities carrying voting rights. Offers for different classes of equity share capital must be comparable; the Panel should be consulted in advance in such cases.

An offer will not be required under this Rule where control of the offeree company is acquired as a result of a voluntary offer made in accordance with the Code to all the holders of voting equity share capital and other transferable securities carrying voting rights.

(See Notes on Dispensations from Rule 9.)

NOTES ON RULE 9.1

PERSONS ACTING IN CONCERT

The majority of questions which arise in the context of Rule 9 relate to persons acting in concert. The definition of "acting in concert" contains a list of persons who are presumed to be acting in concert unless the contrary is established. Without prejudice to the general application of the definition, the following Notes illustrate how the Rule and definition are interpreted by the Panel. Any Panel view expressed in relation to "acting in concert" can relate only to the Code and should not be taken as guidance on any other statutory or regulatory provisions.

1. Coming together to act in concert

Acting in concert requires the co-operation of two or more persons. When a person has acquired an interest in shares without the knowledge of other persons with whom that person subsequently comes together to co-operate

as a group to obtain or consolidate control of a company, and the shares in which they are interested at the time of coming together carry 30% or more of the voting rights in that company, the Panel will not normally require an offer to be made under Rule 9. Such persons having once come together, however, the provisions of the Rule will apply so that:

(a) if the shares in which they are interested together carry less than 30% of the voting rights in that company, an obligation to make an offer will arise if any member of that group acquires an interest in any further shares so that the shares in which they are interested together carry 30% or more of such voting rights; or

(b) if the shares in which they are interested together carry 30% or more of the voting rights in that company and they do not hold shares carrying more than 50% of the voting rights in that company, no member of that group may acquire an interest in any other shares carrying voting rights in that company without incurring a similar obligation.

(See also Note 4 below.)

2. Collective shareholder action

The Panel does not normally regard the action of shareholders voting together on a particular resolution as action which of itself indicates that such persons are acting in concert. However, the Panel will normally presume shareholders who requisition or threaten to requisition the consideration of a board control-seeking proposal at a general meeting, together with their supporters as at the date of the requisition or threat, to be acting in concert with each other and with the proposed directors. Such persons will be presumed to have come into concert once an agreement or understanding is reached between them in respect of a board control-seeking proposal with the result that subsequent acquisitions of interests in shares by any member of the group could give rise to an offer obligation.

In determining whether a proposal is board control-seeking, the Panel will have regard to a number of factors, including the following:

(a) the relationship between any of the proposed directors and any of the shareholders proposing them or their supporters. Relevant factors in this regard will include:

(i) whether there is or has been any prior relationship between any of the activist shareholders, or their supporters, and any of the proposed directors;

(ii) whether there are any agreements, arrangements or understandings between any of the activist shareholders, or their supporters, and any of the proposed directors with regard to their proposed appointment; and

(iii) whether any of the proposed directors will be remunerated in any way by any of the activist shareholders, or their supporters, as a result of or following their appointment.

If, on this analysis, there is no relationship between any of the proposed directors and any of the activist shareholders or their supporters, or if any such relationship is insignificant, the proposal will not be considered to be board control-seeking such that the persons will not be presumed to be acting in concert and it will not be necessary for the factors set out at paragraphs (b) to (f) below to be considered. If, however, such a relationship does exist which is not insignificant, the proposal may be considered to be board control-seeking, depending on the application of the factors set out at paragraph (b) below or, if appropriate, paragraphs (b) to (f) below;

(b) the number of directors to be appointed or replaced compared with the total size of the board.

If it is proposed to appoint or replace only one director, the proposal will not normally be considered to be board control-seeking. If it is proposed to replace the entire board, or if the implementation of the proposal would result in the proposed directors representing a majority of the directors on the board, the proposal will normally be considered to be board control-seeking.

If, however, the implementation of the proposal would not result in the proposed directors representing a majority of the directors on the board, the proposal will not normally be considered to be board control-seeking unless an analysis of the factors set out at paragraphs (c) to (f) below would indicate otherwise;

(c) the board positions held by the directors being replaced and to be held by the proposed directors;

(d) the nature of the mandate, if any, for the proposed directors;

(e) whether any of the activist shareholders, or any of their supporters, will benefit, either directly or indirectly, as a result of the implementation of the proposal other than through its interest in shares in the company; and

(f) the relationship between the proposed directors and the existing directors and/or the relationship between the existing directors and the activist shareholders or their supporters.

In respect of a proposal to replace some or all of the directors and the investment manager of an investment trust company, the relationship between the proposed new investment manager and any of the activist shareholders, or their supporters, will also be relevant to the analysis of the factors set out at paragraph (a) above and, if appropriate, paragraphs (c) to (f) above.

In determining whether it is appropriate for such persons to be held no longer to be acting in concert, the Panel will take account of a number of factors, including the following:

(a) whether the persons have been successful in achieving their stated objective;

(b) whether there is any evidence to indicate that the persons should continue to be held to be acting in concert;

(c) whether there is any evidence of an ongoing struggle between the activist shareholders, or their supporters, and the board of the company;

(d) the types of activist shareholder involved and the relationship between them; and

(e) the relationship between the activist shareholders, or their supporters, and the proposed/new directors.

3. Directors of a company

Directors of a company which is subject to an offer or a possible offer will be presumed to be acting in concert from the beginning of the relevant period as defined in Rule 21.1(b) or, where Note 9 on Rule 21.1 applies, from the beginning of the offer period. The normal provisions of this Rule will apply in these circumstances. At other times, directors of a company are not presumed to be acting in concert in relation to control of the company of which they are directors. Subject to the constraints imposed by the Rules, directors are, so far as the Code is concerned, free to deal in the shares of their company. The Panel reserves the right, however, to examine situations closely should the actions of the directors suggest that they may be acting in concert.

If any persons who have indicated their support for the offeree company's directors against an offer thereafter acquire an interest in shares to frustrate the offer, the Panel would consider their position in relation to the directors. The directors of companies defending against an offer, their supporters or their advisers, should consult the Panel before acquiring an interest in any shares which might lead to the incurring of an obligation under this Rule.

(See also Note 5 on the definition of acting in concert.)

4. Acquisition of interests in shares by members of a group acting in concert

While the Panel accepts that the concept of persons acting in concert recognises a group as being the equivalent of a single person, the membership of such groups may change at any time. This being the case, there will be circumstances when the acquisition of an interest in shares by one member of a group acting in concert from another member will result in the acquirer of the interest in shares having an obligation to make an offer. Whenever a

group acting in concert is interested in shares which together carry 30% or more of the voting rights in a company and as a result of an acquisition of an interest in shares from another member of the group a single member comes to be interested in shares carrying 30% or more or, if already interested in shares carrying over 30%, acquires an interest in any other shares carrying voting rights, the factors which the Panel will take into account in considering whether to waive the obligation to make an offer include:

(a) whether the leader of the group or the member with the largest individual interest in shares has changed and whether the balance between the interests in the group has changed significantly;

(b) the price paid for the interest in shares acquired; and

(c) the relationship between the persons acting in concert and how long they have been acting in concert.

When the group is interested in shares carrying 30% or more of the voting rights in a company but does not hold shares carrying more than 50% of such voting rights, an offer obligation will arise if an interest in any other shares carrying voting rights is acquired from non-members of the group. When the group holds shares carrying over 50% of the voting rights in a company, no obligations normally arise from acquisitions by any member of the group. However, subject to considerations similar to those set out in the previous paragraph, the Panel may regard as giving rise to an obligation to make an offer the acquisition by a single member of the group of an interest in shares sufficient to increase the shares carrying voting rights in which the member of the group is interested to 30% or more or, if the member of the group is already interested in 30% or more, which increases the percentage of shares carrying voting rights in which the member of the group is interested.

For the purpose of calculating the highest price paid in the event of an offer under this Rule, the prices paid for an interest in shares acquired by one member of a group acting in concert from another may be relevant where, for example, all shares or interests in shares held within a group are acquired by that member making the offer or where prices paid between members are materially above the market price.

5. Employee benefit trusts

The Panel must be consulted in advance of any proposed acquisition of an interest in shares if the aggregate number of shares in which the directors, any other persons acting, or presumed to be acting, in concert with any of the directors and the trustees of an employee benefit trust ("EBT") are interested will, as a result of the acquisition, carry 30% or more of the voting rights or, if already carrying 30% or more, will increase further. The Panel must also be consulted in any case where a person (or group of persons acting, or presumed to be acting, in concert) is interested in shares carrying 30% or

more (but does not hold shares carrying more than 50%) of the voting rights and it is proposed that an EBT acquires an interest in any other shares.

The mere establishment and operation of an EBT will not by itself give rise to a presumption that the trustees are acting in concert with the directors and/or a controller (or group of persons acting, or presumed to be acting in concert). The Panel will, however, consider all relevant factors including: the identities of the trustees; the composition of any remuneration committee; the nature of the funding arrangements; the percentage of the issued share capital in which the EBT is interested; the number of shares held to satisfy awards made to directors; the number of shares in which the EBT is interested in excess of those required to satisfy existing awards; the prices at which, method by which and persons from whom any interests in existing shares have been or are to be acquired; the established policy or practice of the trustees as regards decisions to acquire interests in shares or to exercise, or procure the exercise of, votes in respect of shares in which the EBT is interested; whether or not the directors themselves are presumed to be in concert; and the nature of any relationship existing between a controller (or group of persons acting, or presumed to be acting in concert) and both the directors and the trustees. Its consideration of these factors may lead the Panel to conclude that the trustees are acting in concert with the directors and/or a controller (or group).

The above does not apply in respect of shares held within the EBT but controlled by the beneficiaries.

OTHER GENERAL INTERPRETATIONS

6. Vendor of part only of an interest in shares

Shareholders sometimes wish to sell part only of their shareholdings or a purchaser may be prepared to purchase part only of a shareholding. This arises particularly where a purchaser wishes to acquire shares carrying just under 30% of the voting rights in a company, thereby avoiding an obligation to make an offer under Rule 9. The Panel will be concerned to see whether in such circumstances the vendor is acting in concert with the purchaser and/or has effectively allowed the purchaser to acquire a significant degree of control over the shares retained by the vendor such that the purchaser should be treated as having acquired an interest in them by virtue of paragraph (2) of the definition of interests in securities, in which case an offer under Rule 9 would normally be required. A judgement on whether such significant degree of control exists will obviously depend on the circumstances of each individual case. In reaching its decision, the Panel will have regard, inter alia, to the points set out below.

(a) There might be less likelihood of a significant degree of control over the retained shares if the vendor was not an "insider".

(b) The payment of a very high price for the shares would tend to suggest that control over the entire holding was being secured.

(c) Where the retained shares are in themselves a significant part of the company's capital (or even in certain circumstances represent a significant sum of money in absolute terms), a greater element of independence may be presumed.

(d) It would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas as regards the way the company is to be directed are reasonably compatible with the vendor's own. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, divorced from any other evidence of a significant degree of control over the retained shares, would not lead the Panel to conclude that an offer under Rule 9 should be made.

Similar considerations will arise where the vendor remains interested in shares but without itself owning any of such shares, or where the acquisition is not of the shares themselves but of another type of interest in shares.

7. Placings and other arrangements

When a person is to acquire an interest in shares which will result in that person being interested in shares carrying 30% or more of the voting rights of a company, the Panel will consider waiving the requirements of this Rule if firm arrangements are made for the number of shares carrying voting rights in which that person is interested to be reduced to below 30% prior to the acquisition (for example, by a placing of shares) or, in certain exceptional circumstances, if an undertaking is given to make such a reduction within a very short period after the acquisition. In all such cases, the Panel must be consulted in advance. The Panel will be concerned to ensure that none of the persons with whom the acquirer enters into transactions in order to reduce its interests is acting in concert with the acquirer; for example, an obligation under this Rule will not be avoided by placing shares with a number of persons having a common link, such as the discretionary clients of a fund manager who would be connected with the acquirer if it were an offeror (unless, in such circumstances, the fund manager would have exempt status). (See also Rule 9.7.)

8. The chain principle

If a person or group of persons acting in concert ("Acquirer A") acquires shares in a company ("Company B") which results in Acquirer A holding over 50% of the voting rights of Company B (which may or may not be a company to which the Code applies), Acquirer A may thereby indirectly obtain or consolidate control, as defined in the Definitions Section, of a second company ("Company C") because Company B either:

(a) controls Company C; or

(b) is interested in shares in Company C which, when aggregated with those in which Acquirer A is already interested, will result in Acquirer A obtaining or consolidating control of Company C.

The Panel will normally only require an offer to be made under Rule 9 in these circumstances if Company B's interest in shares in Company C is significant in relation to Company B. In assessing this, the Panel will take into account a number of factors including, as appropriate, the assets, profits and market values of the respective companies. Relative values of 30% or more will normally be regarded as significant.

9. Triggering Rule 9 during an offer period

(a) If it is proposed to incur an obligation to make an offer under Rule 9 during the course of a voluntary offer, the Panel must be consulted in advance.

(b) If such an obligation is incurred, an offer in compliance with Rule 9 must be announced immediately (see also Rule 7.1).

(c) Where there is no change in the consideration offered, a revised offer document will not be required and it will be sufficient, following the announcement, to send a notification to offeree company shareholders and persons with information rights setting out:

(i) the new percentage of shares in which the offeror and persons acting in concert with it are interested;

(ii) that the acceptance condition (in the form required by Rule 9.3) is the only condition remaining; and

(iii) the unconditional date.

(d) The offer made in compliance with Rule 9 must remain open for not less than 14 days following the publication of the revised offer document or the sending of the notification referred to in paragraph (c) (as appropriate).

(e) Rule 9.4(c) and Note 3 and Note 4 on Rule 32.1 set out certain restrictions on the incurring of an obligation under Rule 9 during the offer period.

(f) In the case of a scheme of arrangement see Note 2 on Section 2 of Appendix 7.

10. Convertible securities, warrants and options

In general, the acquisition of securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares does not give rise to an obligation to make an offer under Rule 9 but the exercise of any conversion or subscription rights or options will be considered to be an acquisition of an interest in shares for the purpose of the Rule.

The Panel will not normally require an offer to be made following the exercise of conversion or subscription rights provided that the issue of convertible securities, or rights to subscribe for new shares carrying voting rights, to the person exercising the rights is approved by a vote of independent shareholders in general meeting in the manner described in Note 1 of the Notes on Dispensations from Rule 9. However, if the potential controller proposes to acquire any interest in further voting shares following the relevant meeting, the Panel should be consulted to establish the number of shares to which the waiver will be deemed to apply.

Where securities with conversion or subscription rights were issued at a time when no offer obligation on exercise of such rights would arise and no independent shareholders' approval was obtained, the Panel will consider the case on its merits and will have regard, inter alia, to the votes cast on any relevant resolution, the number of shares concerned and the attitude of the board of the company. It is always open to the holder of such rights to dispose of sufficient rights so that, on exercise, the shares in which the holder would be interested would together carry less than 30% of the voting rights in the company. In circumstances where such rights could not be transferred prior to exercise, the Panel would consider waiving the offer obligation arising upon an exercise of rights provided there was an undertaking to reduce the number of shares carrying voting rights in which the holder would be interested to below 30% within a reasonable time. (See also Rule 9.7.)

Any holder of conversion or subscription rights who intends to exercise such rights and so to be interested in shares carrying 30% or more of the voting rights of a company should consult the Panel before doing so to determine whether an offer obligation would arise under the Rule and if so at what price (see also Note 2(c) on Rule 9.5).

Where there are conversion or subscription rights currently capable of being exercised, this Rule is invoked at a level of 30% of the existing voting rights. Where they are capable of being exercised during an offer period, Note 2 and Note 3 on Rule 10.1 will be relevant.

(See also Note 13 on Rule 9.1.)

11. The reduction or dilution of interests in shares

If a person or a group of persons acting in concert interested in shares carrying more than 30% of the voting rights of a company reduces its interest but not to less than 30%, such person or persons may subsequently acquire an interest in further shares without incurring an obligation to make an offer under Rule 9 subject to both of the following limitations:

(a) the total number of shares in which interests may be acquired under this Note in any period of 12 months must not exceed 1% of the voting share capital for the time being (and, in determining the number of shares in which interests have been acquired in any such 12 month period, any reductions in

the number of shares in which the person or group is interested may not be netted off against acquisitions); and

(b) the percentage of shares in which the relevant person or group of persons acting in concert is interested following any acquisition under this Note must not exceed the highest percentage of shares in which such person or group of persons was interested in the previous 12 months.

Both these restrictions apply, and must be tested, at the time of any acquisition proposed under this Note, and by reference to the position which would result immediately upon implementation of the proposed acquisition. On each such occasion, the test must take account of the total issued voting share capital at the relevant time, and total number of shares and highest percentage concerned during the immediately preceding twelve months. As a result, it will not be permitted to increase percentage interests progressively from one year to another.

The Panel will regard a reduction of the percentage of shares in which the person or group is interested as a result of dilution following the issue of new shares as also being relevant for these purposes. Accordingly, dilution of an interest in shares carrying voting rights of more than 30% will give rise to the ability to acquire an interest in further shares on the basis set out in this Note provided that the total percentage of shares carrying voting rights in which the person or group is interested has not been reduced below 30% and subject to the limits stipulated above.

If a shareholding has remained above 50% of the voting rights of a company, or is restored to more than 50% by acquisitions permitted under this Note, further acquisitions are unrestricted by the Rule. Otherwise, a percentage interest in shares carrying voting rights of more than 30% which is reduced or diluted may not be restored to its original level without giving rise to an obligation to make an offer under Rule 9 except as permitted under this Note. However, nothing in this Note affects or restricts subscriptions for new shares approved by independent shareholders in the manner outlined in Note 1 of the Notes on Dispensations from Rule 9.

(See also Rule 37.1.)

12. Gifts

If a person receives a gift of shares or an interest in shares which takes the aggregate number of shares carrying voting rights in which the person is interested to 30% or more, the Panel must be consulted. (See also Note 3 on Rule 9.5.)

13. Allotted but unissued shares

When shares of a company carrying voting rights have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Panel should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under Rule 9.1.

14. Treasury shares

When an obligation to make an offer is incurred under this Rule, it is not necessary for the offer to extend to shares in the offeree company held in treasury.

15. Aggregation of interests across a group and recognised intermediaries

Rule 9.1 will be relevant if the aggregate number of shares in which any person and all persons with which it is presumed to be acting in concert (including any fund manager or principal trader which has been granted exempt status) are interested carry 30% or more of the voting rights of a company.

However, provided that recognised intermediary status has not fallen away (see Note 3 on the definition of recognised intermediary), a recognised intermediary acting in a client-serving capacity will not be treated as interested in (or as having acquired an interest in) any securities by virtue only of paragraph (3) or paragraph (4) of the definition of interests in securities (other than those held in a proprietary capacity) for these purposes.

If such a group of persons includes a principal trader and the aggregate number of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period, the shares are acquired in a client-serving capacity and the number of shares which the principal trader holds in a client-serving capacity does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.

16. Borrowed or lent shares

For the purpose of Rule 9.1, if a person has borrowed or lent shares the person will be treated as interested in such shares save for any borrowed shares which it has either on-lent or sold. A person must consult the Panel before borrowing or acquiring an interest in shares which, when taken together with shares (including lent shares) in which that person or any person acting in concert with that person is already interested, and shares already borrowed by that person or any person acting in concert with that person, might result in an obligation to make a mandatory offer being triggered. Where a person intends to borrow and lend shares on the same day, a mandatory

offer will normally be required only if this will result in an increase in the person's net borrowing position, or that of any person acting in concert with it, as at midnight on that day. See also Note 2 on Rule 9.3.

17. Changes in the nature of a person's interest

Subject to Note 2 on Rule 9.3, for the purpose of this Rule 9.1, a person will not normally be treated as having acquired an interest in shares as a result only of a transaction under which the number of shares in which the person is interested under the different paragraphs of the definition of interests in securities changes but the aggregate number of shares in which it is interested following the transaction remains the same (for example, where the person acquires shares on exercise of a call option).

However, a person who was interested in any shares by virtue of paragraph (3) or paragraph (4) of the definition of interests in securities on 20 May 2006 (when such interests first become relevant for the purpose of Rule 9.1) will normally be treated as having acquired an interest in shares if the person subsequently becomes interested in such shares by virtue of paragraph (1) or paragraph (2) of the definition of interests in securities.

The Panel should be consulted in all such cases to establish whether, in the circumstances, any obligation arises under this Rule.

18. Bank and central counterparty recovery and resolution

In the case of a company to which Schedule 1C to the Act applies, Rule 9.1 does not apply in relation to any change in interests in shares or other transaction which is effected by:

(a) the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014); or

(b) the use of CCP resolution tools, powers and mechanisms (within the meaning given in regulation 2 of the Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023.