RULE 13. CONDITIONS AND PRE-CONDITIONS TO AN OFFER

13.1 SUBJECTIVITY

An offer must not normally be subject to conditions or pre-conditions which depend solely on subjective judgements by the offeror or the offeree company (as the case may be) or, in either case, its directors or the fulfilment of which is in their hands. The Panel may be prepared to accept an element of subjectivity in certain circumstances where it is not practicable to specify all the factors on which satisfaction of a particular condition or pre-condition may depend, especially in cases involving official authorisations or regulatory clearances, the granting of which may be subject to additional material obligations for the offeror or the offeree company (as the case may be).

13.2 REQUIREMENT TO USE ALL REASONABLE EFFORTS

Following the announcement of a firm intention to make an offer, an offeror must use all reasonable efforts to ensure the satisfaction of any conditions or pre-conditions to which the offer is subject.

13.3 ACCEPTABILITY OF PRE-CONDITIONS

(a) The Panel must be consulted in advance if a person proposes to include in an announcement any pre-condition to which the making of an offer will be subject.

(b) Except with the consent of the Panel, an offer must not be announced subject to a pre-condition unless the pre-condition involves an official authorisation or regulatory clearance relating to the offer and either:

(i) the offeree company agrees to the pre-condition; or

(ii) the authorisation or clearance is a material official authorisation or regulatory clearance.

13.4 FINANCING CONDITIONS AND PRE-CONDITIONS

(a) Subject to Rules 13.4(b) and (c), an offer must not be made subject to a condition or pre-condition relating to financing.

(b) Where the offer is for cash, or includes an element of cash, and the offeror proposes to finance the cash consideration by an issue of new securities, the offer must be made subject to any condition required, as a matter of law or regulatory requirement, in order validly to issue such securities or to have them listed or admitted to trading (see Note). Any such condition must not be waivable and the Panel must be consulted in advance.

RULE 13 *CONTINUED*

(c) In exceptional cases, the Panel may be prepared to accept a pre-condition relating to financing either in addition to another pre-condition permitted by Rule 13.3 or otherwise, for example where, due to the likely period required to obtain any necessary material official authorisation or regulatory clearance, it is not reasonable for the offeror to maintain committed financing throughout the offer period. In such a case:

(i) the financing pre-condition must be satisfied (or waived), or the offer must be withdrawn, within 21 days after the satisfaction (or waiver) of any other pre-condition or pre-conditions permitted by Rule 13.3; and

(ii) the offeror and its financial adviser must confirm in writing to the Panel before announcement of the offer that they are not aware of any reason why the offeror would be unable to satisfy the financing pre-condition within that 21 day period.

(d) If, at any time, the offeror or its financial adviser becomes aware, or considers it likely, that the offeror would be unable to satisfy a financing pre-condition, it must promptly notify the Panel.

NOTE ON RULE 13.4

Conditions necessary for the issue, listing or admission to trading of new securities

Conditions which will normally be considered necessary for the purposes of issuing new securities or having them listed or admitted to trading include:

(a) a condition relating to the passing of any resolution necessary to create or allot the new securities and/or to allot the new securities on a non-pre-emptive basis (if relevant); and

(b) where the new securities are to be admitted to listing or to trading on any investment exchange or market, any condition required to give effect to a legal or regulatory requirement relating to the listing and/or admission to trading of those securities (see also Rule 24.10).

13.5 INVOKING CONDITIONS AND PRE-CONDITIONS

(a) An offeror may only invoke a condition or pre-condition so as to cause the offer not to proceed, to lapse or to be withdrawn with the consent of the Panel. The firm offer announcement and the offer document must each incorporate language which appropriately reflects this requirement. The Panel will normally only give its consent if the circumstances which give rise to the right to invoke the condition or pre-condition are of material significance to the offeror in the context of

the offer. This will be judged by reference to the facts of each case at the time that the relevant circumstances arise.

(b) The following will not be subject to Rule 13.5(a):

(i) the acceptance condition (see Rule 9.3 and Rule 10.1);

(ii) a condition relating to the approval of a scheme of arrangement by the offeree company's shareholders or to the sanctioning of the scheme by the court;

(iii) where the offeror proposes to finance cash consideration by an issue of new securities, a condition required under Rule 13.4(b);

(iv) where securities are offered as consideration, a condition required to give effect to a legal or regulatory requirement relating to the issuance, listing and/or admission to trading of those securities (see the Note on Rule 13.4);

(v) a condition required to give effect to a legal or regulatory requirement, or a requirement of the offeror's articles of association (or equivalent), for the offeror's shareholders to approve the implementation of the offer;

(vi) a term relating to the long-stop date of a contractual offer (but see the separate requirements of Rule 12.1 and Rule 12.2);

(vii) a condition relating to a long-stop date of a scheme of arrangement or a specific date by which the shareholder meetings or the court sanction hearing must be held (see Sections 3(b) and (c) of Appendix 7 and also the separate requirements of Section 3(g) of Appendix 7); and

(viii) any other condition or pre-condition that the Panel has agreed will not be subject to Rule 13.5(a) in the particular circumstances.

(c) The firm offer announcement and the offer document must state which conditions and, in the case of a firm offer announcement, pre-conditions are not subject to Rule 13.5(a).

(d) The firm offer announcement and the offer document must state that any condition or, in the case of a firm offer announcement, pre-condition that is subject to Rule 13.5(a) may be waived by the offeror.

13.6 INVOKING OFFEREE PROTECTION CONDITIONS

An offeree company should not invoke, or cause or permit the offeror to invoke, any condition to an offer unless the circumstances which give rise to the right to invoke the condition are of material significance to the shareholders in the offeree company in the context of the offer.

RULE 13 *CONTINUED*

NOTE ON RULE 13.6

When an offeree protection condition may be invoked

The circumstances in which the offeree company will be allowed to invoke, or cause or permit the offeror to invoke, a condition will not necessarily be restricted to those in which the Panel would permit an offeror to invoke a condition. In deciding whether an offeree company may invoke, or cause or permit the offeror to invoke, a condition, the Panel will take into account all relevant factors.

RULE 21. RESTRICTIONS ON FRUSTRATING ACTION

21.1 RESTRICTION ON ACTIONS BY THE BOARD OF THE OFFEREE COMPANY

(a) Except with the approval of shareholders in general meeting or the consent of the Panel, during the relevant period the board of the offeree company must not take or agree to take:

(i) any restricted action; or

(ii) any other action which may result in the frustration of any offer or bona fide possible offer.

(b) The "relevant period" is the period from the earlier of:

(i) an approach by a potential offeror to the board of the offeree company; and

(ii) the beginning of the offer period,

until the end of the offer period or, where no offer period has begun, 5.00 pm on the seventh day following the date on which the latest approach is unequivocally rejected. See also Note 7 and Note 9.

(c) A "restricted action" means any of the following, to the extent that it is not in the ordinary course of the offeree company's business:

(i) issuing, or transferring out of treasury, shares, or securities carrying rights of conversion into or subscription for shares, in the offeree company;

(ii) redeeming or purchasing shares, or securities carrying rights of conversion into or subscription for shares, in the offeree company;

(iii) granting options over or awards in respect of shares in the offeree company;

(iv) disposing of or acquiring (in one or more transactions) assets of a material amount; or

(v) entering into, amending or terminating a material contract.

(d) The Panel must be consulted in advance if any proposed action may be restricted by Rule 21.1(a).

(e) The Panel will normally give its consent under Rule 21.1(a) if:

(i) the taking of the proposed action is conditional on the offer being withdrawn or lapsing (see also Rule 21.1(g));

(ii) the offeror consents to the taking of the proposed action;

(iii) holders of shares carrying more than 50% of the voting rights of the offeree company state in writing that they approve the taking of the proposed action and would vote in favour of any resolution to that effect proposed at a general meeting;

RULE 21 *CONTINUED*

(iv) the proposed action is in pursuance of a contract entered into before the beginning of the relevant period or another pre-existing obligation; or

(v) a decision to take the proposed action had been taken and partly implemented before the beginning of the relevant period.

(f) Where shareholder approval is to be sought in general meeting for the taking of a proposed action the board of the offeree company must:

(i) obtain competent independent advice as to whether the financial terms of the proposed action are fair and reasonable;

(ii) consult the Panel regarding the date of the general meeting; and

(iii) send a circular to shareholders containing the details set out in Note 6 as soon as practicable after the announcement of the proposed action.

(g) Where the Panel has given its consent to a proposed action because the taking of the proposed action is conditional on the offer being withdrawn or lapsing, the board of the offeree company must publish an announcement containing the details set out in Note 6. (See also Rule 30.1(c).)

NOTES ON RULE 21.1

1. Incentive and retention arrangements

(a) The Panel will normally consider the proposed grant of options over, or awards in respect of, shares to be in the ordinary course of the offeree company's business if the timing and level are in accordance with:

(i) the offeree company's normal practice under an established incentive scheme; or

(ii) the offeree company's proposed practice under a new incentive scheme, provided that the proposed practice was publicly disclosed before the relevant period,

or if the grant of options over, or awards in respect of, shares is in connection with a genuine promotion or new appointment or hire.

(b) The Panel will normally consider the issue of new shares or the transfer of shares from treasury to satisfy the exercise of options or the vesting of awards under an incentive scheme to be in the ordinary course of the offeree company's business.

(c) The Panel must be consulted where the board of the offeree company proposes to put in place offer-related retention arrangements (other than arrangements that are considered to be in the ordinary course of the offeree company's business under Note 1(a) or Note 1(b)) that will relate to a period

that is (in whole or in part) prior to the end of the offer period, whether in cash or in the form of options over, or awards in respect of, shares in the offeree company. Where those arrangements are significant in value or relate to directors or management, the Panel may regard entering into those arrangements as a restricted action.

2. Redemption or purchase of own shares

A redemption or purchase of its own shares in line with defined limits announced or established before the relevant period will normally be in the ordinary course of the offeree company's business.

3. Assets of a material amount

(a) In assessing whether a disposal or acquisition is of assets of a material amount, the Panel will normally have regard to:

(i) the value of the consideration to be received or given compared with the market value of the equity share capital of the offeree company; and, where appropriate,

(ii) the value of the assets compared with the value of the assets of the offeree company; and

(iii) the operating profit (i.e. profit before tax and interest and excluding exceptional items) attributable to the assets compared with the operating profit of the offeree company.

For these purposes:

"assets" will normally mean total assets less current liabilities (other than short-term indebtedness); and

"equity share capital" 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 the market value of the equity share capital of the offeree company, the value at the close of business:

(A) on the business day immediately preceding the start of the offer period; or

(B) if there is no offer period, on the business day immediately preceding the announcement of the transaction; and

(ii) for assets and profits, the figures stated in the latest published audited consolidated accounts or, where appropriate, a subsequent preliminary statement of annual results or half-yearly financial report.

(c) The Panel may have regard to additional or alternative indicators of materiality that it considers appropriate either in the context of the relevant industry or in order to take into account the particular circumstances of the offeree company or the nature of the relevant assets.

RULE 21 *CONTINUED*

(d) A relative value of 10% or more will normally be of a material amount. A relative value of less than 10% may also be of a material amount if the assets are of particular significance to the offeree company.

(e) If a number of disposals and/or acquisitions (other than disposals or acquisitions in the ordinary course of the offeree company's business) are or, following the last proposed action, will be, in aggregate, of a material amount, the last relevant disposal or acquisition and any subsequent relevant disposal or acquisition will be treated as a restricted action. Disposals and acquisitions will be aggregated together disregarding any negative values.

4. Service contracts

The Panel will regard entering into or amending a service contract with, or creating or varying the terms of employment or appointment of, a director or manager as entering into or amending a material contract outside the ordinary course of the offeree company's business for the purpose of Rule 21.1 if the new or amended contract or terms constitute an abnormal increase in the director's or manager's emoluments or a significant improvement in the terms of service, unless the increase or improvement results from a genuine promotion or new appointment or hire.

5. Inducement fees

The Panel will normally consider an inducement fee arrangement proposed to be entered into by the offeree company (other than an inducement fee arrangement in relation to an offer permitted under Note 1 or Note 2 on Rule 21.2) to be a material contract outside the ordinary course of the offeree company's business if the aggregate value of the inducement fee or fees that may be payable is:

(a) where the inducement fee arrangement is entered into prior to the announcement by an offeror of a firm intention to make an offer, more than 1% of the market value of the equity share capital of the offeree company (as determined in accordance with Note 3); or

(b) where the inducement fee arrangement is entered into after the announcement by an offeror of a firm intention to make an offer, more than 1% of the value of the offeree company calculated by reference to the price of the offeror's offer (or, if there are two or more offerors, the first offer) at the time of the announcement.

6. Details to be included in circular or announcement

Any circular sent to shareholders under Rule 21.1(f)(iii) or announcement published under Rule 21.1(g) must contain the following:

(a) full details of the proposed action;

(b) the opinion of the board of the offeree company on the proposed action and the board's reasons for forming its opinion;

(c) if Rule 21.1(f)(i) applies, the substance of the advice given to the board of the offeree company;

(d) information about the current status of the offer or possible offer; and

(e) any other information necessary to enable shareholders to make an informed decision.

The offeree company must also publish the circular or announcement, and any contracts entered into in connection with the proposed action, on a website. (See also Rule 26.1(a).)

7. Competing offerors

Where there is more than one offeror, the Panel will normally treat the relevant period for any new offeror or potential offeror as beginning upon an approach by that offeror to the board of the offeree company or, if earlier, when that offeror is publicly identified in an announcement.

8. Reverse takeovers

Where an offer is, or a possible offer would be, a reverse takeover, Rule 21.1 will also apply during the relevant period to the board of the offeror as if the offeror were an offeree company and vice versa.

9. Relevant period where the offeree board is seeking a potential offeror or where a purchaser is sought for a controlling interest

(a) Where the board of an offeree company is seeking one or more potential offerors (whether by way of a formal sale process or otherwise), the relevant period for a potential offeror will not normally begin until that potential offeror makes a proposal with indicative offer terms.

(b) The Panel should be consulted at an early stage to determine when the relevant period will begin for a potential offeror where a purchaser is being sought for interests in shares carrying in aggregate 30% or more of the voting rights of a company.

10. Sanction of a scheme of arrangement in a competitive situation

Other than in exceptional circumstances, the Panel will consent to the restrictions in Rule 21.1(a) not being applied where the board of the offeree company seeks to sanction a scheme of arrangement in a competitive situation.

RULE 21 *CONTINUED*

(a) the aggregate value of the inducement fee or fees that may be payable by the offeree company is de minimis, i.e. normally no more than 1% of the value of the offeree company calculated by reference to the price of the competing offer (or, if there are two or more competing offerors, the first competing offer) at the time of the announcement made under Rule 2.7; and

(b) any inducement fee is capable of becoming payable only if an offer becomes or is declared unconditional.

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 by means of a formal sale process, the Panel will normally grant a dispensation from the prohibition in Rule 21.2, such that the offeree company would be permitted, subject to the same provisos as set out in Note 1(a) and (b) above, to enter into an inducement fee arrangement with one offeror (who had participated in that process) at the time of the announcement of its firm intention to make an offer. In exceptional circumstances, the Panel may also be prepared to consent to the offeree company entering into other offer-related arrangements with that offeror. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.

3. Rule 9 waivers

Rule 21.2 also applies in the context of a transaction which is subject to a Rule 9 waiver. The Panel should be consulted at an early stage where such a transaction is proposed.

4. Disclosure

An announcement of a firm intention to make an offer, an offer document or a Rule 9 waiver circular, as the case may be, must include a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2 and, subject to Note 6 on Rule 26, a copy of the agreement, arrangement or commitment must be published on a website in accordance with Rule 26.2.

21.3 EQUALITY OF INFORMATION TO COMPETING OFFERORS

(a) The board of the offeree company must, on request, equally and promptly provide an offeror or bona fide potential offeror with all information that it has provided, and that it provides in the seven days following the request, to another offeror or potential offeror.

(b) The requirement in Rule 21.3(a) will normally only apply when:

(i) there has been an announcement of the existence of the offeror or potential offeror to which information has been provided; or

RULE 21 *CONTINUED*

(ii) the offeror or bona fide potential offeror requesting information has been informed authoritatively of the existence of another potential offeror.

NOTES ON RULE 21.3

1. Conditions attached to the passing of information

(a) The passing of information under Rule 21.3(a) should not be made subject to any conditions other than those relating to:

(i) the confidentiality of the information passed. This may include a condition that the offeror or potential offeror will not share the information with external providers or potential providers of finance (whether equity or debt) without the consent of the offeree company, provided that such consent may not be unreasonably withheld;

(ii) reasonable restrictions prohibiting the use of the information passed to solicit customers or employees; or

(iii) the use of the information solely in connection with an offer or possible offer.

Any such conditions should be no more onerous than those imposed on any other offeror or potential offeror.

(b) A requirement that the offeror or potential offeror sign a hold harmless letter in favour of a third party will normally be acceptable provided that each other offeror or potential offeror has been required to sign a letter in similar form.

2. Management buy-outs

If the offer or possible offer is a management buy-out or similar transaction, the information which Rule 21.3 requires to be given to another offeror or potential offeror is that information generated by the offeree company (including the management of the offeree company acting in their capacity as such) which is passed to external providers or potential providers of finance (whether equity or debt) to the offeror or potential offeror. The directors who are involved in making the offer must co-operate with the independent directors of the offeree company and its advisers in the assembly of this information.

3. Reverse takeovers

Where an offer or possible offer is a reverse takeover, an offeror or potential offeror for either party to the reverse takeover will be entitled to receive information which has been given by that party to the other party to the reverse takeover.

RULE 21 *CONTINUED*

4. Information provided to a purchaser of assets

(a) If, during the relevant period (as defined in Rule 21.1(b)), the board of the offeree company commences discussions with one or more persons in relation to the sale of all or substantially all of the offeree company's assets (excluding cash and cash equivalents), information provided by the board of the offeree company to the potential asset purchaser(s) must be provided on the basis set out in Rule 21.3 to an offeror or bona fide potential offeror.

(b) This requirement will normally only apply when:

(i) there has been an announcement of the discussions between the offeree company and the potential asset purchaser(s); or,

(ii) the offeror or bona fide potential offeror requesting information has been informed authoritatively that the board of the offeree company and the potential asset purchaser(s) are having such discussions.

(c) If the board of the offeree company was in discussions with one or more potential purchaser(s) regarding the sale of all or substantially all of the offeree company's assets (excluding cash and cash equivalents) prior to the relevant period, Rule 21.3(a) will apply only in relation to information provided to the potential asset purchaser(s) after the beginning of the relevant period.

21.4 INFORMATION TO INDEPENDENT DIRECTORS IN MANAGEMENT BUY-OUTS

If the offer or possible offer is a management buy-out or similar transaction, the offeror or potential offeror must, on request, equally and promptly provide the independent directors of the offeree company or its advisers with all information which has been, or is subsequently, provided by the offeror or potential offeror to external providers or potential providers of finance (whether equity or debt) for the management buy-out or similar transaction.

shareholder or other person confirming its support in writing to the relevant party to the offer or its adviser and that confirmation being provided to the Panel. Such confirmation will then be treated as a letter of intent. The Panel will not require separate verification by an offeror where the information required by Note 3 on Rule 2.10 is included in an announcement of an offer or possible offer which is published no later than 12 noon on the business day following the date on which the letter of intent is procured.

19.4 INTERVIEWS AND DEBATES

Parties to an offer should, if interviewed on radio, television or any other media, seek to ensure that the sequence of the interview is not broken by the insertion of comments or observations by others not made in the course of the interview. Further, joint interviews or public confrontation between representatives of the offeror and the offeree company, or between competing offerors, should be avoided (see also Rule 20.1).

19.5 POST-OFFER UNDERTAKINGS

(a) A party to an offer must consult the Panel in advance if it wishes to make a post-offer undertaking.

(b) A post-offer undertaking must:

(i) state that it is a post-offer undertaking;

(ii) specify the period of time for which the undertaking is made or the date by which the course of action committed to will be completed; and

(iii) prominently state any qualifications or conditions to which the undertaking is subject.

(c) The terms of any post-offer undertaking made by a party to an offer, including the course of action committed to be taken, or not taken, and the qualifications or conditions to which it is subject, must:

(i) be specific and precise;

(ii) be readily understandable and capable of objective assessment; and

(iii) not depend on subjective judgements of the party to the offer or its directors.

(d) Any post-offer undertaking made by a party to an offer other than in a document published by that party in connection with the offer must be included in the next such document published by that party. The Panel may, in addition, require a document to be sent to the offeree company's shareholders and persons with information rights and made readily

available to its and the offeror's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s). Any subsequent reference by the party to the offer concerned to any post-offer undertaking which it has made must be accompanied by a reference to any qualifications or conditions to which the undertaking is subject or to the relevant sections of the document, announcement or other information in which they were included.

(e) A party to an offer must comply with the terms of any post-offer undertaking for the period of time specified in the undertaking and must complete any course of action committed to by the date specified in the undertaking.

(f) A party to an offer will be excused compliance with the terms of a post-offer undertaking only if a qualification or condition set out in the undertaking applies. If a party to an offer wishes to rely on a qualification or condition to a post-offer undertaking in order to take, or not take, a course of action otherwise than in compliance with the terms of that undertaking, that party must consult the Panel in advance and obtain the Panel's consent to rely on that qualification or condition.

(g) Except with the consent of the Panel, if such a course of action is then taken or not taken (as appropriate) with the Panel's consent, the party must promptly make an announcement describing the course of action it has taken, or not taken, and explaining how and why the relevant qualification or condition applies.

(h) A party to an offer which has made a post-offer undertaking must submit written reports to the Panel after the end of the offer period at such intervals (of not more than 12 months) and in such form as the Panel may require. Such reports must, as appropriate:

(i) indicate whether any course of action that the party has committed to take has been implemented or completed within the specified period of time and, if not, the progress made to date and the steps being taken to implement or complete the course of action and the expected timetable for completion;

(ii) confirm that any course of action that the party has committed not to take has not been taken;

(iii) include such other documents or information as the Panel may require; and

(iv) be published, in whole or in part (as required by the Panel), in accordance with the requirements of Rule 30.1.

RULE 19 *CONTINUED*

(i) The Panel may require a party to an offer which has made a post-offer undertaking to appoint a supervisor to:

(i) monitor compliance by that party with that undertaking; and

(ii) submit written reports to the Panel, at such intervals and in such form as the Panel may require, as to the compliance by that party with that undertaking,

in accordance with arrangements made between the Panel and the supervisor. The party to the offer must comply with any obligations imposed on it in the supervisor's terms of appointment.

NOTES ON RULE 19.5

1. Commitments which are not regarded as post-offer undertakings

(a) The Panel may decide not to permit a party to an offer to make a post-offer undertaking where the Panel determines that the proposed commitment would more appropriately be given in a different form (including, for example, a commitment to a specified person which could be included in a private contract with that person).

(b) A party to an offer which proposes to make a commitment to take, or not take, any particular course of action after the end of the offer period other than by means of a post-offer undertaking must consult the Panel in advance. The Panel will then consider whether the proposed commitment would more appropriately be made as a post-offer undertaking. If, with the agreement of the Panel, the party to the offer makes that commitment by the proposed means, the Panel will normally require any reference to the commitment in any document, announcement or other information published by it in relation to the offer to make clear that the commitment has not been made as a post-offer undertaking in accordance with the requirements of Rule 19.5 and that the commitment will therefore not be enforceable by the Panel as a post-offer undertaking.

2. Qualifications or conditions

A party to an offer which has made a post-offer undertaking subject to a qualification or condition must not take any action, or omit to take any action, which would cause an event, act or circumstance referred to in a qualification or condition to occur. In addition, if the Panel determines that a party has taken action, or omitted to take action, which has caused an event, act or circumstance referred to in a qualification or condition to occur, the party will not normally be permitted to rely on that qualification or condition in order to avoid compliance with the post-offer undertaking.

RULE 19 *CONTINUED*

3. Responsibility for written reports

Any written report submitted to the Panel in accordance with Rule 19.5(h) must state that the report has been approved by the board of directors (or equivalent body) of the party to the offer concerned and must be signed on its behalf by a duly authorised director (or equivalent person).

4. Appointment of supervisor

A supervisor appointed under Rule 19.5(i) must be independent of the party to the offer concerned, and any person acting in concert with it, and must have the skills and resources necessary to perform the functions of a supervisor. The identity of the supervisor and the terms of appointment must be agreed by the Panel. The costs of the supervisor will be met by the party to the offer which has made the post-offer undertaking.

19.6 POST-OFFER INTENTION STATEMENTS

(a) Any post-offer intention statement made by a party to an offer must be:

(i) an accurate statement of that party's intention at the time that it is made; and

(ii) made on reasonable grounds.

(b) If a party to an offer has made a post-offer intention statement and, during the period of 12 months from the date on which the offer period ended, or such other period of time as was specified in the statement, that party decides either:

(i) to take a course of action different from its stated intentions; or

(ii) not to take a course of action which it had stated it intended to take,

it must consult the Panel. Except with the consent of the Panel, if such a course of action is then taken or not taken (as appropriate), the party must promptly make an announcement describing the course of action it has taken, or not taken, and explaining its reasons for taking, or not taking, that course of action (as appropriate).

(c) A party to an offer which has made a post-offer intention statement must, at the end of the period of 12 months from the date on which the offer period ended, or such other period of time as was specified in the statement:

(i) confirm in writing to the Panel whether it has taken, or not taken, the course of action it stated in the post-offer intention statement that it intended to take, or not to take; and

RULE 19 *CONTINUED*

(ii) publish that confirmation in accordance with the requirements of Rule 30.1.

a shareholder in the offeree company) or of certain management incentivisation arrangements falling under Rule 16.2; or

(b) a condition relating to an action by shareholders in the offeree company, such as the rejection of an acquisition or disposal proposed by the offeree board (see Rule 21.1).

3. The Executive's approach to the invocation of conditions

(a) Introduction

3.1 If a condition to which Rule 13.5(a) applies is not satisfied or waived, the offeror must seek the consent of the Executive to invoke the condition so as to cause the offer to lapse. In such circumstances, the Executive will need to consider:

(a) whether the condition is engaged in accordance with its terms (such that it is capable of being invoked); and, if so

(b) whether the circumstances which give rise to the right to invoke the condition satisfy the material significance requirement.

3.2 The factors which the Executive will take into account in reaching its determination include those set out in section 3(b). Whilst an offeror may wish to take steps to ensure that as many factors as possible will be satisfied or weigh in its favour, it is not necessary for all relevant factors to be supportive in order for an offeror to be permitted to invoke a condition. The factors are not a "checklist" of items which must all be present for the Executive to give its consent and it is recognised that the satisfaction of one factor may preclude the satisfaction of another.

3.3 The Executive expects to be consulted at the earliest opportunity if an offeror may wish to invoke a condition. The Executive will then establish a reasonable and limited period of time within which the offeror must decide whether it wishes to seek the Executive's consent to the invocation of the condition.

(b) Factors to be taken into account

(i) All relevant conditions

3.4 The Executive will take all relevant factors into account when considering whether the material significance requirement has been satisfied such that it should consent to a request by an offeror to invoke a condition.

3.5 Relevant factors include the following:

(a) whether the condition was included to take account of the particular circumstances of the offeree company;

(b) whether the condition was the subject of negotiation with the offeree board;

(c) whether the condition was expressly drawn to the attention of offeree company shareholders in the offer document or firm offer announcement, with a clear explanation of the circumstances which might give rise to the right to invoke the condition;

(d) whether the circumstances that have arisen could have reasonably been foreseen at the time of the firm offer announcement and, if they could, the likelihood of the circumstances arising;

(e) the actions taken by the offeror since the firm offer announcement and, in particular, since the circumstances on which the offeror is seeking to rely arose. For example, if, since the relevant circumstances arose, the offeror has purchased shares in the offeree company, or has made statements indicating an intention to continue to pursue the offer, the Executive will be less likely to agree that the material significance requirement has been satisfied; and

(f) the views of the offeree board, i.e. the Executive will be more likely to consent to a request by an offeror to invoke a condition if the offeree board agrees that this is the appropriate course of action.

(ii) General protective conditions, including a material adverse change condition

3.6 The application of Rule 13.5(a) to a general protective condition was considered by the Panel on appeal during the offer for Tempus Group plc by WPP Group plc (see Panel Statement 2001/15), in which the offeror sought to invoke a material adverse change condition.

3.7 The Panel concluded that the material significance requirement was not satisfied and stated that "… meeting this test requires an adverse change of very considerable significance striking at the heart of the purpose of the transaction in question, analogous … to something that would justify frustration of a legal contract."

3.8 In applying Rule 13.5(a) in the light of that decision, the Executive's practice is that:

(a) in the case of a Category 6 condition, in order for the material significance requirement to be satisfied, the offeror will need to demonstrate that the relevant circumstances are of very

considerable significance striking at the heart of the purpose of the transaction; and

(b) whilst this is a high standard, it does not require the offeror to demonstrate frustration in the legal sense.

(iii) Phase 2 Reference Conditions

3.9 An offeror may include a condition to its offer (a "Phase 2 Reference Condition") relating to there being no phase 2 reference by the Competition and Markets Authority and/or no "phase 2" or similar "in depth" review by another antitrust or other governmental or regulatory body in relation to the obtaining of a material official authorisation or regulatory clearance (a "Phase 2 Reference").

3.10 In considering whether the material significance requirement has been satisfied in relation to a Phase 2 Reference Condition, the Executive will take into account the following factors (in addition to those in paragraph 3.5):

(a) the potential impact of the reference or process on the business of the offeror and/or the offeree company, including the management time, costs and other burdens involved in pursuing it; and

(b) the utility of requiring the offeror and/or the offeree company to pursue the reference or process where the likelihood of the clearance being obtained is low (because of the low probability either of obtaining clearance at all or of obtaining clearance before the long-stop date).

3.11 The ability of the offeror to demonstrate that the making of a Phase 2 Reference satisfies the material significance requirement, and therefore the willingness of the Executive to consent to the invocation of a Phase 2 Reference Condition, will not be adversely affected by the fact(s) that:

(a) the offer is also subject to a specific condition in relation to clearance being obtained at the conclusion of the Phase 2 Reference (a "Phase 2 Clearance") and/or a general regulatory (or "sweeper") condition (together, a "Phase 2 Clearance Condition"); and/or

(b) the long-stop date may accommodate the time needed to undertake a Phase 2 Reference.

3.12 Conversely, if an offer is not subject to a Phase 2 Clearance Condition, that will not be considered to support an argument that the making of a Phase 2 Reference satisfies the material significance requirement, such

that the offeror should be permitted to invoke a Phase 2 Reference Condition.

3.13 If a Phase 2 Reference is made (and any Phase 2 Reference Condition is waived) but the offer is not subject to a (specific or general sweeper) Phase 2 Clearance Condition, the consequence will be that the offeror will not be able to lapse the offer if the Phase 2 Clearance is not obtained (unless another condition can be invoked). The Executive therefore considers that, from the perspective of the Code, it would be prudent for an offer normally to be made subject to a Phase 2 Clearance Condition and that an offeror should give careful consideration to the consequences of not making the offer subject to such a condition.

(iv) Regulatory clearance conditions

3.14 In considering whether the material significance requirement has been satisfied in relation to a specific condition relating to the obtaining of an official authorisation or regulatory clearance or a general sweeper condition (whether following a Phase 2 Reference or otherwise), the Executive will take into account the following factors (in addition to those in paragraph 3.5):

(a) the significance of the authorisation or clearance to the offeror;

(b) what action, if any, the offeror would need to take in order to obtain the authorisation or clearance and, if known, the strategic consequences for the offeror if it were to take that action; and

(c) the consequences for the offeror and its directors if it were to complete the offer without obtaining the authorisation or clearance.

4. Timetable suspensions

4.1 If a condition relating to an official authorisation or regulatory clearance has not been satisfied or waived by 5.00 pm on the second day prior to Day 39 of a contractual offer, the Executive will normally suspend the offer timetable either:

(a) at the joint request of the offeror and the offeree company (Rule 31.4(a)(i)); or

(b) at the request of either the offeror or the offeree company, provided that the condition relates to a material official authorisation or regulatory clearance, i.e. if the Executive is satisfied that the failure to obtain the authorisation or clearance could (potentially) satisfy the material significance requirement (Rule 31.4(a)(ii)).

PRACTICE STATEMENT 34

RULE 21.1 – RESTRICTION ON ACTIONS BY THE BOARD OF THE OFFEREE COMPANY

1. Introduction

1.1 Rule 21.1(a) provides that during the relevant period the board of the offeree company must not, except with the approval of shareholders in general meeting or the consent of the Panel, take or agree to take:

(a) any restricted action; or

(b) any other action which may result in the frustration of any offer or bona fide possible offer.

1.2 Rule 21.1(b) defines the "relevant period" for the purposes of Rule 21.1.

1.3 Rule 21.1(c) sets out certain actions that are a "restricted action" to the extent that the relevant action is not in the ordinary course of the offeree company's business.

1.4 Rule 21.1(e) sets out the circumstances in which the Panel will normally give its consent to the taking of a proposed action that would otherwise be restricted by Rule 21.1(a).

1.5 This Practice Statement provides guidance on:

(a) matters that the Panel Executive will take into account when determining:

(i) whether an action listed in Rule 21.1(c)(i) to (v) is in the ordinary course of the offeree company's business; and

(ii) whether to give its consent to a proposed action that would be restricted under Rule 21.1(a) on the basis that a decision to take the proposed action had been taken and partly implemented before the beginning of the relevant period, as described in Rule 21.1(e)(v);

(b) how the Executive applies Note 7 on Rule 21.1, which describes how Rule 21.1 will apply where there is more than one offeror;

(c) how the Executive applies Note 9 on Rule 21.1, in relation to the relevant period where the offeree board is seeking a potential offeror or where a purchaser is being sought for a controlling interest in a company; and

(d) how the Executive normally interprets "exceptional circumstances" when determining under Note 10 on Rule 21.1 whether it will

consent to the restrictions in Rule 21.1(a) not being applied where the offeree board seeks to sanction a scheme of arrangement in a competitive situation.

1.6 Rule 21.1(d) provides that the Panel must be consulted in advance if any proposed action may be restricted by Rule 21.1(a). Offeree boards and advisers to offeree companies are encouraged to consult the Executive at an early stage, including to determine whether a proposed action is in the ordinary course of the offeree company's business.

2. Disposals and acquisitions of assets

(a) Disposals and acquisitions of assets for cash

2.1 Rule 21.1(c)(iv) provides that disposing of or acquiring (in one or more transactions) assets of a material amount, other than in the ordinary course of the offeree company's business, is a restricted action.

2.2 Note 3 on Rule 21.1 describes how the Panel will assess whether assets being disposed of or acquired are of a material amount.

2.3 The matters that the Executive will consider when determining whether a disposal or acquisition is in the ordinary course of the offeree company's business include whether:

(a) the proposed transaction falls within the established business model of the offeree company, taking into account:

(i) the frequency of similar transactions and the size of the proposed transaction in comparison to previous similar transactions; and

(ii) how the offeree company describes its business strategy to its shareholders;

(b) the terms of the proposed transaction and the basis of valuation are in line with normal practice by reference to either a broader market (for example, where the offeree company proposes to dispose of or acquire liquid securities) or previous transactions entered into by the offeree company or its peers; and

(c) the proposed transaction is part of an ongoing strategy, rather than a strategic change.

2.4 The Executive will also take into account the cumulative effect of disposals and acquisitions during the relevant period on the offeree company's assets and business as a whole. Where the offeree company has agreed to make a large number of disposals or acquisitions during

the relevant period, each of which is not restricted by Rule 21.1(a) because it is:

(a) not material individually; or

(b) in the ordinary course of the offeree company's business,

the Executive may nonetheless consider that the overall level of disposals and acquisitions is no longer in the ordinary course of the offeree company's business.

2.5 If so, any subsequent disposal or acquisition would not be regarded as being in the ordinary course of the offeree company's business. As a result, for the purpose of Note 3(e) on Rule 21.1, all subsequent disposals and/or acquisitions would be aggregated together with any disposals and/or acquisitions that the Executive had already agreed should be aggregated under Note 3(e) (i.e. any disposal and/or acquisition entered into earlier in the relevant period that was not in the ordinary course of the offeree company's business but was not individually material).

(b) Acquisitions of assets for the issue of shares or convertible securities

2.6 Rule 21.1(c)(i) provides that issuing shares or convertible securities, other than in the ordinary course of the offeree company's business, is a restricted action.

2.7 The Executive will consider the following matters when determining whether the issue of shares or convertible securities as consideration for an acquisition of assets is in the ordinary course of the offeree company's business:

(a) the frequency with which the offeree company has issued shares or convertible securities as consideration for an acquisition of assets;

(b) the size of the proposed issue of shares or convertible securities in comparison to historical issues of shares or convertible securities as consideration for an acquisition of assets;

(c) the terms of the proposed issue of shares or convertible securities, including whether they will be issued at market value; and

(d) whether the acquisition of assets itself would be in the ordinary course of the offeree company's business, taking into account the matters set out in paragraph 2.3.

3. Contracts - general

3.1 Rule 21.1(c)(v) provides that entering into, amending or terminating a material contract, other than in the ordinary course of the offeree company's business, is a restricted action.

3.2 The Executive will assess whether a contract is a material contract primarily by reference to its size in comparison to other contracts entered into by the offeree company. The Executive will apply a low threshold for determining when a contract is material.

3.3 If a contract is a material contract, the Executive will assess whether it is in the ordinary course of the offeree company's business by reference to all the relevant circumstances, including:

(a) the frequency with which the offeree company has entered into similar contracts;

(b) the size of the contract in comparison to similar contracts entered into by the offeree company;

(c) whether the contract is of particular importance to the offeree company's business;

(d) the terms of the contract and whether any non-market terms are onerous on the offeree company; and

(e) if relevant, the costs associated with terminating or amending the contract.

3.4 The application of the approaches described in paragraphs 3.2 and 3.3(b) means that the size of a contract will be relevant in assessing both whether it is a material contract and (if so) whether it is in the ordinary course of the offeree company's business. For example, if a contract represents a large proportion of the offeree company's revenue (and is therefore a material contract), its size may mean that it is not in the ordinary course of business even though the contract relates to the offeree company's normal products or services (such that the offeree company regularly enters into smaller similar contracts).

3.5 The Executive will normally consider a minor amendment to a material contract to be in the ordinary course of the offeree company's business (even if the contract itself is not in the ordinary course of the offeree company's business). As a result, a minor amendment to a material contract will not normally be a restricted action.

PRACTICE STATEMENT 34 *CONTINUED*

4. Contracts - specific examples

(a) Introduction

4.1 In addition to the matters relevant to all contracts set out in Section 3, the Executive will take into account additional matters, as set out below, when considering whether certain types of contract are in the ordinary course of the offeree company's business.

(b) Capital expenditure

4.2 Regular or maintenance capital expenditure will normally be regarded as being in the ordinary course of the offeree company's business. In considering material "growth" capital expenditure (for example, capital expenditure required to enter a new product area or geographical market), the Executive will take into account the offeree company's historical approach to capital expenditure and whether the proposed capital expenditure and/or the related strategic decision had been publicly disclosed before the start of the relevant period.

(c) Refinancing or raising new debt

4.3 Refinancing or raising new debt on normal market terms will normally be regarded as being in the ordinary course of the offeree company's business. The Executive may treat issuing new shares or securities that do not form part of the offeree company's equity share capital in the same way as raising new debt, depending on the nature of the rights attaching to the relevant shares or securities.

(d) Property leases

4.4 Normal property lease management will normally be regarded as being in the ordinary course of the offeree company's business.

(e) Settlement agreements

4.5 Rule 21.1(a) should not normally compromise the ability of the offeree board to achieve the best outcome for shareholders in relation to a commercial dispute and entering into a settlement agreement in relation to a commercial dispute or a compromise agreement with a departing director or employee will normally be regarded as being in the ordinary course of the offeree company's business.

4.6 When considering whether that is the case, the Executive will take into account:

(a) the financial impact of the settlement agreement or compromise agreement;

(b) whether the relevant costs have been provided for in the offeree company's accounts or are covered by insurance;

(c) any legal advice received by the offeree company; and

(d) any other likely impact on the offeree company.

5. Offer-related retention arrangements

5.1 Note 1(c) on Rule 21.1 provides that the Panel may regard as a restricted action entering into offer-related retention arrangements that:

(a) relate to a period that is (in whole or in part) prior to the end of the offer period (other than arrangements that are considered to be in the ordinary course of the offeree company's business under Note 1(a) or Note 1(b) on Rule 21.1); and

(b) are significant in value or relate to directors or management.

5.2 The Executive will not normally regard new offer-related retention arrangements as being significant in value where the aggregate value of the arrangements is no more than 1% of the value of the offeree company calculated by reference to the price of the offer.

5.3 Where the arrangements are for the benefit of directors or management or are significant in value, additional matters may be relevant in determining whether entering into the proposed arrangements should be regarded as a restricted action. These may include:

(a) the change to the offeree company's aggregate employment costs;

(b) the terms of each individual retention arrangement, including the absolute value of the award;

(c) the proportion of the individual's annual remuneration that the proposed award represents;

(d) the expected offer timetable and the time at which the offeree board proposes to grant the award;

(e) the normal practice in the relevant industry or sector;

(f) the importance of the individual to the offeree company's business;

(g) any change to the individual's role within the offeree company's business; and

(h) the views of the Rule 3 adviser.

6. Partial implementation of a decision to take a proposed action

6.1 Rule 21.1(e)(v) provides that the Panel will normally consent to a proposed action that would be restricted by Rule 21.1(a) where:

(a) a decision to take the proposed action had been taken; and

(b) that decision had been partly implemented,

in each case, before the beginning of the relevant period.

6.2 In considering whether a decision to take a proposed action had been taken by the offeree board, the Executive will normally seek to determine whether the board had made an "in principle" decision.

6.3 If it had then, in considering whether that "in principle" decision had been partly implemented, the Executive will normally seek to determine whether the substantial commercial terms, and in particular the financial terms, had been agreed between the parties. In some cases, the commercial terms may have been agreed at the time of the "in principle" decision and in other cases they may not have been agreed until a later stage.

6.4 By way of example, in the context of a proposed disposal of assets by the offeree company by means of a competitive auction, the Executive considers that:

(a) indicative, first round, non-binding bids based on only an assessment of an information memorandum will not normally be a sufficient basis for an "in principle" decision to undertake the proposed disposal to be partly implemented; and

(b) second round, binding bids which follow the completion of due diligence and have been accepted as a basis for entering into a sale and purchase contract will normally be a sufficient basis for an "in principle" decision to undertake the proposed disposal to be partly implemented.

6.5 Where the relevant action does not involve an agreement with a third party, the Executive will consider whether steps have been taken towards implementing the "in principle" decision. For example, in the context of a decision by the offeree board to grant options over shares, the Executive would consider whether the offeree board had taken steps towards implementing the grant, such as communicating the decision to the recipient of the options or preparing the required documentation.

7. Competing offerors

7.1 The restrictions in Rule 21.1(a) apply during the relevant period. Under Rule 21.1(b), the relevant period begins upon the earlier of:

(a) an approach by a potential offeror to the board of the offeree company; and

(b) the beginning of the offer period.

7.2 Note 7 on Rule 21.1 provides that, where there is more than one offeror, the Panel will normally treat the relevant period for any new offeror or potential offeror as beginning upon an approach by that offeror to the board of the offeree company or, if earlier, when that offeror is publicly identified in an announcement.

7.3 Rule 21.1(e) sets out the circumstances in which the Panel will normally give its consent to a proposed action that would be restricted by Rule 21.1(a). The effect of Note 7 on Rule 21.1 is that, where there is more than one offeror, the Executive may agree to give its consent to a proposed action based on a combination of the circumstances set out in Rule 21.1(e).

7.4 For example, the offeree board may continue to take steps towards implementing a proposed action after it has received an approach from a potential offeror and later receive an approach from a second potential offeror. In such circumstances, the Executive may determine that the decision to take that action had been taken and partly implemented at a point in time after the offeree board received the approach from the first offeror, such that the decision was not partly implemented before the beginning of the relevant period for the first offeror. However, the decision may have become partly implemented before the offeree board received the approach from the second offeror, such that it was partly implemented before the beginning of the relevant period for the second offeror.

7.5 If, on the facts of the relevant case, the Executive determined that the decision to take the proposed action had been taken and partly implemented at a point in time between the approach from the first offeror and the approach from the second offeror, it could permit the proposed action on the basis of a combination of, for example:

(a) the first offeror having consented to the proposed action under Rule 21.1(e)(ii); and

(b) the decision to take the proposed action having been taken and partly implemented under Rule 21.1(e)(v) before the approach from the second offeror.

7.6 Similarly, the disposals and/or acquisitions that are required to be aggregated for the purpose of Note 3(e) on Rule 21.1 are only those entered into during the relevant period. As the effect of Note 7 on Rule 21.1 is to give each competing offeror its own relevant period, the offeree board may therefore be required to aggregate different disposals and/or acquisitions for the purpose of Note 3(e) on Rule 21.1 for each offeror.

8. Relevant period where the offeree board is seeking a potential offeror or where a purchaser is being sought for a controlling interest

8.1 Note 9(a) on Rule 21.1 provides that where the offeree board is seeking one or more potential offerors (whether by way of a formal sale process or otherwise), the relevant period for a potential offeror will not normally begin until that potential offeror makes a proposal with indicative offer terms.

8.2 An offeror is not required to propose a specific offer price in order to be considered to have made a proposal with indicative offer terms. A proposal that included a price range or a quantified indicative premium to the prevailing share price could constitute a proposal with indicative offer terms. The offeree board or offeror should consult the Executive if there is any doubt as to whether a proposal contains indicative offer terms.

8.3 Note 9(b) on Rule 21.1 provides that the Panel should be consulted at an early stage to determine when the relevant period will begin where a purchaser is being sought for interests in shares carrying in aggregate 30% or more of the voting rights of a company.

8.4 By analogy with Note 9(a) on Rule 21.1, the Executive considers that, in such circumstances, the relevant period will normally begin for a potential offeror when it makes a proposal to the selling shareholder setting out indicative terms for the purchase (i.e. indicative offer terms).

8.5 However, if the offeree board is not aware that a buyer is being sought for a controlling stake, or is not aware of the current status of the discussions between the selling shareholder and potential purchasers, the Executive may agree that the restrictions in Rule 21.1(a) will apply only once the offeree board is made aware that the potential offeror has made an indicative proposal setting out terms.

8.6 The offeree board or the controlling shareholder should consult the Executive to discuss when the relevant period will begin where a purchaser is being sought for a controlling interest.

9. Sanction of a scheme of arrangement in a competitive situation

9.1 Note 10 on Rule 21.1 provides that, other than in exceptional circumstances, the Panel will consent to the restrictions in Rule 21.1(a) not being applied where the offeree board seeks to sanction a scheme of arrangement in a competitive situation.

9.2 The Executive will consider in the light of all the relevant facts whether there are exceptional circumstances, such that the restrictions in Rule 21.1(a) should apply to the offeree board seeking to sanction a scheme of arrangement in a competitive situation. Exceptional circumstances might exist if, for example, the Executive considered that the offeree board was acting in a clearly unreasonable manner in seeking to sanction the scheme.

9.3 The Executive considers that the fact that the offeree board is seeking to sanction the lower of two competing offers, or that the competing offeror has had a limited time in which to make or revise its offer, would not of itself be regarded as exceptional circumstances.

9.4 If a competing offeror does not approach the offeree board, or does not otherwise make its interest in making an offer known, until after the shareholder meetings to approve the scheme of arrangement, the Executive will normally consent to the restrictions in Rule 21.1(a) not being applied under Rule 21.1(e)(v) on the basis that the offeree board's decision to seek to sanction the scheme was partly implemented before the beginning of the relevant period for the competing offeror (as determined in accordance with Note 7 on Rule 21.1).

Practice Statements are issued by the Panel Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Takeover Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case.

11 December 2023